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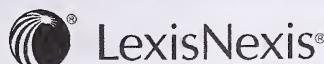
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TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

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SUBTITLE 2. NONMEDICAL PROFESSIONS

CHAPTER 29

EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL ESTABLISHMENTS

SUBCHAPTER.

2. EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS.
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SUBCHAPTER 2 — EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

SECTION.

- 17-29-207. Rules.
- 17-29-211. Administrative activities.

17-29-207. Rules.

(a) The State Board of Embalmers and Funeral Directors may promulgate appropriate rules for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the practice of embalming and funeral directing in the State of Arkansas as it deems expedient and consistent with the laws of this state and for the public good.

(b) The board may promulgate rules reasonably necessary to reflect any changes in the law as adopted by the United States Congress or any appropriate agency of the United States Government as it affects funeral establishments, funeral directors, or embalmers and for the purpose of keeping this law consistent with, and compatible to, the laws of the United States.

(c)(1) The board may determine the qualifications necessary to practice the science of embalming or the business of funeral directing, or both, and shall adopt bylaws and rules in connection with the care and disposition of dead human bodies in this state.

(2) The board shall enforce compliance with the laws and rules by those engaged in the science of embalming and business of funeral directing in this state and may transact any other business necessary for carrying out the provisions of this subchapter and § 17-29-301 et seq.

(d)(1) The board may promulgate reasonable rules for the licensing of crematoriums.

(2)(A) Beginning January 1, 1990, a crematorium may not be operated in this state unless licensed by the board, and a person shall not be cremated in this state except at a licensed crematorium.

(B) Violations of this subsection are Class A misdemeanors.

(e)(1) In the interest of public health and to ensure the safe, secure, and timely transportation of dead human bodies in and through Arkansas, the board may license, inspect, and promulgate reasonable rules for any person, partnership, corporation, association, society, or other legal entity engaged in the business of transporting dead human bodies over the public streets and highways of this state.

(2) Violations of rules promulgated under this subsection are Class A misdemeanors.

History. Acts 1983, No. 325, §§ 4, 10; A.S.A. 1947, §§ 71-904, 71-910; Acts 1989, No. 106, § 6; 2011, No. 874, § 1.

Amendments. The 2011 amendment deleted “and regulations” following “rules” in the section heading and throughout (a) through (c); substituted “may” for “is em-

powered to” in (a); substituted “may” for “is expressly authorized and empowered to” in (b); subdivided (c); substituted “may” for “is authorized and empowered to” in (c)(1); and substituted “rules” for “regulations” in (d)(1), (e)(1), (e)(2) and made minor stylistic changes.

17-29-211. Administrative activities.

The Executive Secretary of the Burial Association Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors.

History. Acts 1997, No. 39, § 3.

A.C.R.C. Notes. Acts 2011, No. 150, § 3, provided: "PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Association Board an amount equal to one-half (½) of the salary of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2012, No. 73, § 3, provided: "PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Association Board an amount equal to

one-half (½) of the salary of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2013, No. 431, § 3: provided: "PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Association Board an amount equal to one-half (½) of the salary of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

SUBCHAPTER 3 — EMBALMERS AND FUNERAL DIRECTORS LAW — LICENSING

SECTION.

17-29-304. Funeral establishment — Requirements.

17-29-305. Funeral establishments — Examinations — Licenses.

SECTION.

17-29-306. Renewal.

17-29-311. Violations — Prohibitions.

17-29-304. Funeral establishment — Requirements.

(a) No person shall conduct, maintain, manage, or operate a funeral establishment unless a license for each establishment has been issued by the State Board of Embalmers and Funeral Directors and is displayed in the funeral establishment.

(b)(1) No license shall be issued to operate a full-service funeral establishment by the board unless the establishment has employed a full-time person licensed as a funeral director.

(2) If the establishment is a part of a multiunit enterprise within this state, only one (1) establishment within the multiunit enterprise must have a full-time person licensed as funeral director, provided the full-time licensed person is reasonably accessible to the branch establishment.

(c) Application for the funeral establishment licenses shall be made on forms furnished by the board.

(d) All embalming therein shall be performed by or under the direct supervision of an Arkansas-licensed embalmer.

(e) An establishment in which embalming is conducted shall have a preparation room with a sanitary floor, walls, and ceiling, adequate sanitary drainage and disposal facilities, including running water, and exhaust fans. Such an establishment shall comply with the regulations of the Department of Health for the prevention of the spread of contagious, infectious, or communicable diseases.

(f) Each funeral establishment using an available embalmer shall file with the board a notarized statement signed by the embalmer, stating that his or her services are available to the establishment at all times, and within a reasonable time after death occurs, not to exceed six (6) hours.

(g) A funeral establishment shall contain a casket selection room with a reasonable number of caskets therein. The reasonable number shall be determined by the board. However, if an establishment is a part of a multiunit enterprise, only one (1) establishment in the enterprise need have a selection room if it is within a reasonable distance of other establishments within the multiunit enterprise.

(h) Mobile homes or mobile units are prohibited for use as a funeral establishment or branch thereof. No mobile home or mobile units shall be used for the performance of any function or service of a funeral establishment except in case of emergency as prescribed by the board. Mobile homes, modular units, manufactured homes, and similar mobile units may be granted a replacement license on a case-by-case basis.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1999, No. 1138, § 4; 2003, No. 367, § 3; 2011, No. 874, § 2. deleted "on or before January 1 of each year, and accompanied by the specified fee" at the end of (c).

Amendments. The 2011 amendment

17-29-305. Funeral establishments — Examinations — Licenses.

(a)(1) Funeral establishment licenses shall be issued, upon application to the State Board of Embalmers and Funeral Directors, only after examination of the establishment to be licensed reveals that the requirements of the board for an establishment license have been met. The fee shall accompany the application for a funeral establishment license.

(2) All funeral establishment licenses expire on December 31 of each year.

(3) The board shall grant or deny each application for a license under this section after it is filed.

(4) No person who has filed an application for a license shall be prosecuted for violation of this section unless it is shown that this application was duly denied by the board and that he or she was duly notified of the denial.

(b)(1) When an establishment changes ownership, the board shall be notified in writing within thirty (30) days.

(2) If there is a change in the name of the establishment, a new license shall be issued in the new name if the requirements for licenses as established in this section are met.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1997, No. 839, § 4; 1999, No. 1138, § 5; 2011, No. 874, § 3.

Amendments. The 2011 amendment

subdivided (b) and substituted "If there is a change in the name of the establishment" for "At that time" in present (b)(2).

17-29-306. Renewal.

(a)(1) Every license holder under this subchapter who wishes to continue the practice of the science of embalming or the business of funeral directing, or both, shall pay a renewal fee to the Secretary-treasurer of the State Board of Embalmers and Funeral Directors on or before December 31 of each year.

(2) A license not renewed by December 31 of any year shall be considered delinquent.

(3) Any person in arrears more than three (3) years shall appear before the board at a regular meeting and pay a delinquency fee determined by rule of the board to be eligible for renewal of a license.

(b)(1) Renewal of a funeral establishment license shall be made on or before December 31 of each year and shall be accompanied by the annual renewal fee prescribed in § 17-29-208.

(2) A license not renewed by December 31 of any year shall be considered delinquent and constitute grounds for disciplinary action by the board.

(c) Failure to receive the renewal notice shall not relieve the licensee or establishment of the duty to pay the renewal fee as prescribed.

History. Acts 1983, No. 325, §§ 4, 7; A.S.A. 1947, §§ 71-904, 71-907; Acts 1997, No. 839, § 5; 2011, No. 874, § 4.

Amendments. The 2011 amendment subdivided (a) and (b); substituted "December 31" for "January 31" throughout (a) and (b); in (a)(1), deleted "the provisions of" preceding "this subchapter," in-

serted "a renewal fee" following "shall pay," and deleted "a renewal fee" from the end; substituted "A license" for "Certificates" in (a)(2); and, in (a)(3), deleted "make application to the board and" preceding "appear before the board" and inserted "and pay a delinquency fee determined by rule of the board."

17-29-311. Violations — Prohibitions.

(a) The State Board of Embalmers and Funeral Directors may issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following:

- (1) Conviction of a felony;
- (2) Misrepresentations made or fraud committed as a holder of a license;
- (3) False or misleading advertising;
- (4) Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending, provided that this prohibition shall not be deemed to prohibit general advertising;
- (5) Employment directly or indirectly of an apprentice, agent, assistant, employee, or other person on a part-time or full-time basis or on a commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
- (6) The direct or indirect payment or offer of payment of a commission by the licensee, his or her agents, assistants, or employees for the purpose of securing business;
- (7) Allowing personnel unlicensed pursuant to this subchapter to execute contracts for funeral service;
- (8) Aiding or abetting an unlicensed person to practice embalming or funeral directing;
- (9) Violation of any provision of this subchapter and § 17-29-201 et seq.;
- (10) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;
- (11) Fraud or misrepresentation in obtaining or renewing a license;
- (12) Refusing to properly release a dead human body to the custody of the person or entity having the legal right to effect such a release if all other applicable laws and rules have been followed by the holder of the license;
- (13) Willful failure to secure a permit for the removal or burial or other disposition of a dead human body;
- (14) Knowingly making a false statement on a certificate of death;
- (15) Violations of applicable law or regulation with regard to prearranged or prepaid funeral services or funeral merchandise. However, the proper regulatory agency for prearranged or prepaid funeral services or funeral merchandise shall have determined that such a violation has occurred;
- (16) Discriminating in services because of race, creed, color, or national origin;

- (17) Failure to meet continuing education requirements; or
- (18) Failure to answer a complaint within the fifteen-day time period.

(b) No violation of subdivisions (a)(4)–(a)(7) of this section shall be deemed to have occurred when in the ordinary course of business a routine sale of a prearranged or a prefinanced funeral or of funeral merchandise shall have been made.

(c) No person licensed pursuant to this subchapter shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death until permission of the coroner or medical examiner, or some other fully qualified person acting in such a capacity if there is no coroner or medical examiner, has first been obtained.

(d) A public officer or employee, the official of any public institution, any physician or surgeon, or any other person having a professional relationship with a decedent shall not send or cause to be sent to a funeral establishment or to a person licensed under this subchapter the remains of any deceased person without having first made due inquiry as to the desires of the authorizing agent or agents.

(e) It shall be unlawful for any person, partnership, corporation, or association who has not been licensed or registered as specified in this subchapter to transact, practice, or hold himself or herself or itself out as transacting or practicing embalming or funeral directing or operating or maintaining a funeral establishment within this state.

(f) All dead human bodies not buried or otherwise disposed of within twenty-four (24) hours after death shall be embalmed as prescribed in this subchapter or § 17-29-201 et seq. or stored under refrigeration as determined by the State Board of Health.

(g) It shall be unlawful and a violation of this subchapter and § 17-29-201 et seq. to transport or otherwise transfer by common carrier any dead human body out of the State of Arkansas unless the body has been prepared and embalmed by a licensed embalmer of this state and a transit-burial permit has been issued by the local registrar of the county where death occurred. Any licensee of this state permitting this to be done shall be subject to the punishment spelled out in this subchapter and § 17-29-201 et seq.

(h) It shall be unlawful and a violation of this chapter for any person to engage in the practice of embalming or funeral directing or to hold himself or herself out to the public as a practicing embalmer or funeral director within the State of Arkansas without being the holder of a license.

History. Acts 1983, No. 325, § 11; A.S.A. 1947, § 71-911; Acts 1997, No. 839, § 7; 2003, No. 367, § 4; 2011, No. 874, §§ 5, 6.

Amendments. The 2011 amendment inserted “if all other applicable laws and rules have been followed by the holder of

the license” in (a)(12); and substituted “the authorizing agent or agents” for “the next of kin and of the persons who may be chargeable with the funeral and expenses of the decedent. If any such kin is found, his or her authority and directions shall govern except in those instances in which

the deceased made his or her arrangements" in (d).

CHAPTER 30

ENGINEERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS.
3. REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-30-101. Definitions.

17-30-101. Definitions.

As used in this chapter:

(1) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering, whose livelihood is obtained by offering engineering services to the public, who serves clients as an independent fiduciary, who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest, and who is aware of his or her public and legal responsibilities and is capable of discharging them;

(2) "Engineer-intern" means a person who under this chapter has:

(A) Qualified for an examination authorized by the State Board of Licensure for Professional Engineers and Professional Surveyors in fundamental engineering subjects; and

(B) Passed the examination;

(3)(A) "Firm" means a form of business entity that offers professional engineering services of its licensed personnel to the public.

(B) "Firm" does not include an individual licensee operating under his or her name;

(4)(A) "Practice of engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge in the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning, and design of engineering works and systems relating to the use of air, land, water, municipal and regional planning, forensic services, engineering teaching of advanced engineering subjects or related courses, engineering surveys, and the inspection of construction to assure compliance with drawings and specifications that are related to public or private service or work, concerning any utilities, structures, buildings, machines, equipment, processes, work systems, or projects including architectural work that is incidental to the practice of engineering.

(B) A person practices or offers to practice engineering, within the meaning of this chapter, who:

- (i) Practices a branch of the profession of engineering;
- (ii) By verbal claim, sign advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer;
- (iii) Through the use of some other title implies that he or she is an engineer or that he or she is licensed under this chapter; or
- (iv) Holds himself or herself out as able to perform or does perform an engineering service or work or any other service designated by the practitioner that is recognized as engineering.

(C) "Practice of engineering" does not include:

- (i) Persons who operate or maintain machinery or equipment; or
- (ii) The act of measuring land, drawing plans, reading plans, or doing other work normally performed by a mechanic, technician, professional surveyor, or draftsman;

(5) "Professional engineer" means a person who has been licensed as a professional engineer by the State Board of Licensure for Professional Engineers and Professional Surveyors; and

(6) "Responsible charge" means direct control of, supervision of, and legal responsibility for all engineering work performed.

History. Acts 1953, No. 214, § 3; 1969, No. 196, § 1; A.S.A. 1947, § 71-1020; Acts 1993, No. 1041, § 1; 2009, No. 444, § 1; 2011, No. 897, § 1.

Amendments. The 2011 amendment inserted "authorized by the State Board of

Licensure for Professional Engineers and Professional Surveyors" in present (2)(A); inserted present (4)(C)(ii); deleted former (4)(D) and made stylistic changes through the section.

SUBCHAPTER 2 — STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

SECTION.

17-30-203. Powers, duties, and proceedings.

17-30-203. Powers, duties, and proceedings.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors shall:

- (1) Meet at least two (2) times each year;
- (2) Have a seal that shall be affixed to each certificate of licensure; and
- (3) Require that plans, specifications, plats, and reports issued by a professional engineer are stamped with a board-authorized design seal.

(b) The board:

- (1) May determine the persons entitled to be licensed and those whose licenses shall be suspended or revoked;
- (2) Shall fix the fees and renewal fees;
- (3) Shall hold examinations for applicants for licensure not less than two (2) times a year; and

(4) May do any other things necessary to its duties, including the adoption of rules not inconsistent with this chapter, the Arkansas Constitution, and other laws.

(c)(1) The board may subpoena witnesses and compel their attendance and also may require the production of books, papers, and documents.

(2) A member of the board may administer oaths or affirmations to witnesses before the board.

(d) The expenses incurred by the board for the administration of this chapter may be paid by the board.

History. Acts 1953, No. 214, § 4; 1957, No. 285, § 1; 1969, No. 131, § 1; A.S.A. 1947, § 71-1021; Acts 2009, No. 444, § 3; 2011, No. 897, § 2.

Amendments. The 2011 amendment substituted “that shall be” for “which among other things must be” in (a)(2); in (a)(3), substituted “by a professional engi-

neer are” for “by an engineer shall be,” inserted “board-authorized design,” and deleted “of a design authorized by the board” following “seal”; deleted “Within the limits prescribed by this chapter” at the beginning of the introductory language of (b); and deleted “and regulations” following “rules” in (b)(4).

SUBCHAPTER 3 — REGISTRATION

SECTION.

17-30-303. Authorization certificates.
17-30-304. Fees — Renewal of certificates
 — Disposition of funds —
 Inactive — Reinstatements.
17-30-305. Administrative violations and
 penalties.

SECTION.

17-30-306. Disciplinary action — Proce-
 dures.
17-30-307. Continuing education require-
 ments.

17-30-303. Authorization certificates.

(a)(1) The practice or offer to practice for others, as defined in § 17-30-101, by individuals licensed under this chapter through a firm is permitted if:

(A) The professional engineers of the firm are licensed under this chapter or are practicing under § 17-30-105; and
(B) The firm has been issued a certificate of authorization by the State Board of Licensure for Professional Engineers and Professional Surveyors under this subchapter.

(2) All final drawings, specifications, plans, reports, calculations, or other engineering papers or documents involving the practice of engineering, as defined in this chapter, when issued or filed for public record, shall be dated and bear the signature and seal of the professional engineer qualified in the appropriate branch of engineering who prepared them or under whose immediate direction they were prepared.

(b)(1) A firm desiring a certificate of authorization shall file with the board an application, using the form provided by the board, providing all the information required by the board, and also listing the names and addresses of the individual or individuals duly licensed to practice

engineering in this state who shall be in responsible charge of the practice of engineering in the state through the firm, and other information, which must accompany the annual renewal fee.

(2) If there is a change in any of these persons during the year, the change shall be designated on the same form and filed with the board within thirty (30) days after the effective date of the change.

(3) If all of the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for furnishing engineering services.

(c) This chapter does not prevent a firm from performing engineering services for the firm itself or a subsidiary or an affiliate of the firm.

(d)(1) The firm shall not be relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section.

(2) An individual practicing engineering under this chapter shall not be relieved of responsibility for engineering services performed by reason of employment or other relationship with a firm holding an authorization certificate.

(e) A certificate of authorization shall be renewed as provided in this chapter.

(f) An engineer who gives occasional, part-time, or consulting engineering services to or for a firm shall not be designated as being responsible for the professional activities of the firm unless the engineer is an officer or owner of the firm.

(g)(1) The Secretary of State shall not issue a certificate of incorporation to an applicant or a registration as a foreign firm to a firm that includes among the objectives for which it is established any of the words "engineer", "engineering", or any modification or derivation thereof unless the board of licensure for this profession has issued for the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive such a certificate.

(2) The firm applying shall supply such a certificate or letter from the board with its application for incorporation or registration.

(h) The Secretary of State shall decline to register any trade name or service mark that includes words as set forth in subsection (g) of this section or modifications or derivatives thereof in its firm name or logos except those firms holding authorization certificates issued under this section.

History. Acts 1993, No. 1041, § 3; 2009, No. 444, § 4; 2011, No. 897, §§ 3, 4.

Amendments. The 2011 amendment deleted "subject to this chapter" in (a)(1); deleted former (a)(1)(A) and redesignated the remaining subdivisions accordingly;

substituted "under this subchapter" for "as hereinafter provided" in present (a)(1)(B); added "unless the engineer is an officer or owner of the firm" in (f) and substituted "shall not" for "may not, for the purpose of this section,".

17-30-304. Fees — Renewal of certificates — Disposition of funds — Inactive — Reinstatements.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may establish application fees, certificate fees, renewal fees, license reinstatement fees, examination fees, penalties for late renewals or cancellations, and any other fees it deems necessary within the guidelines of the State of Arkansas.

(b) The board may establish guidelines and require a demonstration of continuing professional competency as a condition of renewal or relicensure.

(c) All certificates shall be renewed annually or biennially at the discretion of the board.

(d) The fees shall be deposited into a bank designated by the board, and the officer or employee who collects the fees and disburses them shall be required to execute a corporate surety bond for the proper accounting thereof.

(e)(1) A professional engineer or engineer-intern licensed under this chapter who is not engaged in the practice of engineering may request that the board grant him or her inactive status by placing his or her name on the board's inactive roll.

(2) A professional engineer or engineer-intern who is granted inactive status maintains the right to seek active license status at a later time.

(3) A professional engineer whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of professional competency.

(4) Inactive status shall continue so long as the license holder pays the annual fee under the board's rules.

(f) A professional engineer or engineer-intern whose license is not renewed may have it reinstated by meeting the requirements of the board depending on the time of nonrenewal under the rules of the board. The requirements the board may consider are:

(1) Payment of fees and penalties;

(2) Demonstration of continuing professional competency; and

(3) Reexamination.

History. Acts 1953, No. 214, § 6; 1969, No. 196, § 3; A.S.A. 1947, § 71-1023; Acts 1993, No. 1041, § 3; 2001, No. 591, § 1; 2009, No. 444, § 4; 2011, No. 897, § 5; 2013, No. 589, § 1.

Amendments. The 2011 amendment

added "depending on the time of nonrenewal under the rules of the board" in the introductory language of (f) and added "The requirements the board may consider are:".

The 2013 amendment rewrote (a).

17-30-305. Administrative violations and penalties.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend, revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, fine, or reprimand a professional engineer who is:

(1) Found guilty of:

(A) Fraud or deceit in obtaining, attempting to obtain, or renewing a certificate of licensure or certificate of authorization;

(B) Negligence, incompetency, or misconduct in the practice of engineering;

(C) Failure to comply with this chapter, the rules of the board, or an order of the board;

(D) Discipline by another state, territory, the District of Columbia, a foreign country, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section;

(E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter;

(F) Knowingly making false statements or signing false statements, certificates, or affidavits to induce payment;

(G) Aiding or assisting another person in violating this chapter or the rules of the board;

(H) Violating a term of probation imposed by the board;

(I) Using a seal or practicing engineering while the professional engineer's license is suspended, revoked, nonrenewed, or inactive;

(J) Signing, affixing the professional engineer's seal, or permitting the professional engineer's seal or signature to be affixed to an instrument of practice that has not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control;

(K) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(L) Providing false testimony or information to the board; or

(M) Habitual intoxication or addiction to the use of drugs or alcohol; or

(2) Found guilty of or enters a plea of guilty or nolo contendere to:

(A) A felony;

(B) A crime of which an essential element is dishonesty; or

(C) A crime that is directly related to the practice of engineering.

(b) In addition to any other penalty provided in this section, a person who violates this chapter or a rule of the board shall pay to the board a civil penalty in an amount determined by the board of not more than five thousand dollars (\$5,000) for each offense.

(c)(1) The board shall adopt rules of professional conduct under § 17-30-203 that shall be published in writing to an applicant for licensure under this chapter and published in the roster.

- (2) The publication shall constitute due notice to the licensees.
- (3) The board may amend the rules of professional conduct from time to time and shall notify each licensee in writing of the amendments.
- (d) The board may:
 - (1) Revoke a certificate of authorization;
 - (2) Suspend a certificate of authorization for no more than two (2) years of a firm if one (1) or more of its officers or directors have been found guilty of conduct that would authorize a revocation or suspension of the certificate of licensure of the officer or director under this section;
 - (3) Place a licensee on probation under rules prescribed by the board; or
 - (4) Levy a fine of not more than five thousand dollars (\$5,000) for each offense.
- (e) The board may discipline nonlicensees that violate this chapter by imposing a fine of not more than five thousand dollars (\$5,000) for each offense.

History. Acts 1953, No. 214, § 4; A.S.A. 1947, § 71-1021; Acts 1993, No. 1041, § 3; 2009, No. 444, § 4; 2011, No. 897, § 6.

Amendments. The 2011 amendment rewrote the section heading; substituted “a” for “or any combination of these, any” in the introductory language of (a); deleted “The practice of” from the beginning of (a)(1)(A); substituted “rules of the board, or an order of the board” for “or regulations pertaining to this chapter” in (a)(1)(C); substituted “of the board” for “or regulations pertaining to this chapter” at the end of (a)(1)(G); substituted “an instrument of practice that has not been

prepared” for “any specifications, reports, drawings, plans, design information, construction documents, or calculations, or revisions thereof that have not been prepared” in present (a)(1)(J); inserted “guilty or” in the introductory language of (a)(2); deleted “or regulation” following “rule” in (b); substituted “published” for “made known” in (c)(1); inserted “of the officer or director” in (d)(2); in (d)(3), inserted “a licensee” and substituted “under rules prescribed by” for “for a period of time and subject to such conditions as the board may specify”; and deleted “count or separate” preceding “offense” in (d)(4).

17-30-306. Disciplinary action — Procedures.

- (a) The rules promulgated by the State Board of Licensure for Professional Engineers and Professional Surveyors for disciplinary procedures shall be based on and consistent with the model rules of procedure of the Attorney General.
- (b) A charge, unless dismissed or settled informally shall be heard by the board within twelve (12) months after the date on which the charge was submitted.
- (c) A fine or civil penalty not paid within fifty (50) days after the order becomes final shall constitute a judgment, and the order shall be filed and executed in the same manner as any other judgment of a court of record.
- (d) Upon petition of an individual licensee or firm holding a certificate of authorization, the board may reissue a certificate of licensure or authorization if a majority of the members of the board vote to reissue the certificate of licensure or authorization.

History. Acts 1993, No. 1041, § 3; **Amendments.** The 2011 amendment 2001, No. 591, § 2; 2009, No. 444, § 4; rewrote the section. 2011, No. 897, § 7.

17-30-307. Continuing education requirements.

(a)(1) The State Board of Licensure for Professional Engineers and Professional Surveyors shall issue rules establishing the continuing education requirements for professional engineers and engineer-interns.

(2) The rules shall take into account the accessibility to applicants of the board's continuing education requirements.

(3) The rules may:

(A) Rely upon guidelines and pronouncements of recognized educational and professional associations;

(B) Prescribe the content, duration, and organization of courses;

(C) Provide for the relaxation or suspension of requirements for:

(i) Applicants who certify that they do not intend to engage in the practice of engineering; and

(ii) Instances of individual hardship;

(D) Exempt from licensed continuing education requirements a professional engineer sixty-five (65) years of age or older with twenty-five (25) or more years of experience as a practicing professional engineer; and

(E)(i) Prescribe the manner and condition under which credit shall be given for participation in a program of continuing education that the board considers necessary and appropriate to maintain competency in the practice of engineering.

(ii) Examples of programs of continuing education that are acceptable include without limitation programs or seminars sponsored by higher educational institutions, government agencies, and professional engineering organizations and related professions.

(b)(1) An application for renewal of a certificate of licensure shall be accompanied by evidence documenting the completion of acceptable continuing education credit during the previous renewal period.

(2) Failure by an applicant to provide this evidence upon request by the board is grounds for disciplinary action unless the board determines the failure is due to a reasonable cause or the applicant was not engaged in the practice of engineering during the previous renewal period.

(3) The board may renew a certificate of licensure despite an applicant's failure to furnish satisfactory evidence of meeting continuing education requirements and may issue a certificate of licensure to an applicant who has previously maintained inactive status under § 17-30-304 if the applicant follows a particular program or schedule of continuing education prescribed by the board.

History. Acts 2011, No. 897, § 8.

CHAPTER 31

FORESTERS

SUBCHAPTER.

2. THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS.
3. CERTIFICATE OF REGISTRATION.

SUBCHAPTER 2 — THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS

SECTION.

17-31-201. Creation — Selection and compensation of members.

17-31-201. Creation — Selection and compensation of members.

(a) The Arkansas State Board of Registration for Foresters is created to administer the provisions of this chapter.

(b)(1) The board shall consist of six (6) members appointed by the Governor, with the advice and consent of the Senate. Each member shall be a citizen of the United States of America and a registered voter and resident of the State of Arkansas.

(2)(A) Five (5) members of the board shall be foresters registered under § 17-31-302 and who have been engaged in forestry for at least twelve (12) years.

(B)(i) One (1) member shall be nominated by the Arkansas Forestry Association to represent the forest products industry.

(ii) One (1) member shall be nominated by the State Forester to represent the Arkansas Forestry Commission.

(iii) One (1) member shall be nominated by the Provost of the University of Arkansas at Monticello from the faculty or staff of the University of Arkansas at Monticello School of Forest Resources.

(iv) One (1) member shall be nominated by the Arkansas Division of the Ouachita Society of American Foresters.

(v) One (1) member shall be nominated by the Arkansas Chapter of the Association of Consulting Foresters to represent private forestry consultants.

(C) At least one (1) member shall be a graduate of the University of Arkansas at Monticello School of Forest Resources.

(3) One (1) member of the board shall not be actively engaged in or retired from the forestry profession. That member shall represent consumers. He or she shall be appointed from the state at large and shall be a full voting member but shall not participate in the grading of examinations.

(c) Appointments shall be for a term of five (5) years or, in the event of vacancies, for the period of the unexpired term of the vacancy being filled.

(d) Each member of the board shall receive a certificate of appointment from the Governor and before beginning the term of office shall

file with the Secretary of State a written oath or affirmation relative to the faithful discharge of the official duty.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 535, §§ 4-6; 1971, No. 122, § 1; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 71-2404 — 71-2406; Acts 1997, No. 250, § 139; 1999, No. 993, § 5; 2011, No. 177, § 1.

Amendments. The 2011 amendment, in (b)(2)(A), substituted “registered” for “who have the qualifications required for registration” and deleted the last sen-

tence; substituted “nominated by the Arkansas Forestry Association to represent” for “selected from” in (b)(2)(B)(i); substituted “nominated by the State Forester to represent” for “selected from” in (b)(2)(B)(ii); rewrote (b)(2)(B)(iii) through (b)(2)(C); deleted “subject to confirmation by the Senate” following “at large” in (b)(3); and deleted (c)(2).

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.

17-31-302. Qualifications.

17-31-303. Application for registration.

SECTION.

17-31-307. Expiration and renewal.

17-31-302. Qualifications.

The applicant must pass a written examination on basic forestry subjects administered by the Arkansas State Board of Registration for Foresters with a score established by the board along with the following minimum evidence that an applicant is qualified to be registered as a forester:

(1) A bachelor’s or advanced degree in forestry from a college or university program accredited by the Society of American Foresters;

(2) A bachelor’s or advanced degree in forestry from a college or university program not accredited by the Society of American Foresters and, subject to graduation, three (3) years or more experience in forestry work of a nature satisfactory to the board;

(3) A bachelor’s degree in a natural resources-related field from a college or university program, including, but not limited to, wildlife management, with at least twenty (20) semester hours of forestry courses approved by the board and, subsequent to graduation, three (3) years’ or more experience in forestry work of a nature satisfactory to the board;

(4) A bachelor’s degree not related to natural resources from a college or university program and, subsequent to graduation, six (6) years’ or more experience in forestry work of a nature satisfactory to the board; or

(5) A two-year associate’s degree in forestry from a community college or junior college and, subsequent to graduation, six (6) years’ or more of experience in forestry work of a nature satisfactory to the board.

History. Acts 1969, No. 535, § 13; 1973, No. 245, § 1; A.S.A. 1947, § 71-2413; Acts 1999, No. 993, § 9; 2011, No. 177, § 2.

Amendments. The 2011 amendment rewrote the introductory language; and deleted the last sentence of (1) through (5).

17-31-303. Application for registration.

- (a) Application for registration shall:
 - (1) Be on forms prescribed and furnished by the Arkansas State Board of Registration for Foresters;
 - (2) Contain statements under oath giving a detailed summary of the applicant's education and technical experience; and
 - (3) Contain the names and addresses of not fewer than five (5) references, of whom three (3) or more shall be registered foresters who have personal or professional knowledge of the applicant's forestry experience or his or her character and ability.
- (b) The amount of the application fee and the registration fee shall be set annually by the board.
- (c) A person shall not be eligible for registration as a forester who is not of good character and reputation.

History. Acts 1969, No. 535, § 14; 1971, No. 122, § 2; A.S.A. 1947, § 71-2414; Acts 1999, No. 993, § 10; 2011, No. 177, § 3.

Amendments. The 2011 amendment, in (a)(3), inserted "registered", deleted the last sentence, and made a stylistic change.

17-31-307. Expiration and renewal.

- (a) Certificates of registration shall expire on December 31 of the year for which issued or renewed and shall become invalid thereafter unless renewed.
- (b) The Secretary of the Arkansas State Board of Registration for Foresters shall notify by letter to the last known address every person registered under this chapter of the date of the expiration of the certificate and the amount of the fee required for its renewal of one (1) year. Notice shall be delivered at least one (1) month in advance of the date of the expiration of such a certificate.
- (c) (1) The Arkansas State Board of Registration for Foresters shall require persons who are licensed under this subchapter to complete not fewer than six (6) hours of continuing forestry education during the previous year beginning January 1, 2001, as a condition of license renewal. Continuing forestry education shall be equivalent to the Society of American Foresters Category I for continuing forestry education which includes, but is not limited to, seminars, short courses, and workshops in forestry or a related subject matter as approved by the board.

- (2) Credit accrues at a rate of one (1) hour for each hour of actual contact.
- (3) The board may approve continuing forestry education courses offered by professional organizations, institutions of higher learning, qualified individuals, or specialty societies. The board may approve

credit hours for meetings, presentations, or other activities considered by the board to be a form of continuing forestry education.

(4) A successful applicant for licensure under this subchapter shall have two (2) years from the date the license is issued to complete the first year's requirements for continuing forestry education. After two (2) years, the registered forester shall complete the continuing forestry education requirements as required by this subsection.

(d) The board may waive the continuing forestry education requirements in cases of hardship, illness, or retirement from active forestry practice.

(e) The board may promulgate rules and regulations to ensure compliance with the requirements of this section.

(f) Renewal of a certificate of registration shall be for a fee set annually by the board.

(g) The failure on the part of any registrant to renew the certificate annually in the month of December as required in this section shall not deprive the person of the right of renewal, but the fee to be paid for the renewal of a certificate after December 31 shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. However, the maximum fee for delayed renewal shall not exceed two (2) times the annual renewal fee.

History. Acts 1969, No. 535, § 17; 1971, No. 122, § 3; A.S.A. 1947, § 71-2417; Acts 1999, No. 993, § 11; 2011, No. 177, § 4.

Amendments. The 2011 amendment

substituted "delivered" for "mailed" in (b); deleted the last sentence in (c)(2); and substituted "year's requirements for" for "six (6) hours of" in (c)(4).

CHAPTER 32

GEOLOGISTS

SUBCHAPTER 2 — STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS

A.C.R.C. Notes. Acts 2013, No. 708, § 1, provided: "Effective July 1, 2013, the State Board of Registration for Professional Geologists established by A.C.A.

§ 17-32-201 is transferred as a Type 1 transfer under A.C.A. § 25-2-104 to the Arkansas Geological Survey."

CHAPTER 35

INTERIOR DESIGNERS

SUBCHAPTER.

1. INTERIOR DESIGNERS TITLE REGISTRATION.
3. REQUIREMENTS.

SUBCHAPTER 1 — INTERIOR DESIGNERS TITLE REGISTRATION**SECTION.****17-35-101. Short title.****17-35-103. Definitions.****SECTION.****17-35-104. Exemptions — Use of the title.****17-35-105. Penalties.****17-35-101. Short title.**

This subchapter and §§ 17-35-301 — 17-35-304 may be cited as the “Arkansas Interior Designers Title Registration Act”.

History. Acts 1993, No. 847, § 1; 2009, No. 1367, § 11; 2011, No. 859, § 3. substituted “This subchapter” for “Sections 17-35-101 — 17-35-105.”

Amendments. The 2011 amendment

17-35-103. Definitions.

(a) As used in this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304, “registered interior designer” means a person registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

(b)(1) A registered interior designer is a design professional who is qualified by education, experience, and examination as authorized by an authority.

(2) In general, a registered interior designer performs services including preparation of working drawings and documents relative to non-load-bearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment.

(c) Except as provided herein, interior design services do not include services that constitute the practice of architecture as defined in the Arkansas Architectural Act, § 17-15-101 et seq., or the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq.

History. Acts 1993, No. 847, § 3; 2009, No. 1367, § 11; 2011, No. 859, § 4.

Amendments. The 2011 amendment, in (a), inserted “this subchapter” preced-

ing “§ 17-15-201 et seq.” in two places and deleted “this subchapter” preceding “§ 17-35-301 — 17-35-304” in two places.

17-35-104. Exemptions — Use of the title.

(a) This subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304 do not apply to persons holding themselves out as “interior decorators” or offering “interior decorating services” such as selection or assistance in selecting surface materials, window treatments, wall coverings, paint, floor coverings, surface-mounted lighting, or loose furnishings not subject to regulation under applicable building codes.

(b) This subchapter and §§ 17-35-301 — 17-35-304 do not apply to architects licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers provided that the architects do not refer to themselves as “registered interior designers” unless registered under this subchapter and §§ 17-35-301 — 17-35-304.

(c) This subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304 do not prevent any person from rendering interior design services, provided such a person does not use the title of “registered interior designer” unless registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 13; 2009, No. 1367, § 11; 2011, No. 859, § 5.

Amendments. The 2011 amendment substituted “This subchapter, § 17-15-201 et seq.” for “Section 17-15-201 et seq., this subchapter” or variant in (a) and (c); de-

leted a comma after interior decorator in (a); and substituted “This subchapter, § 17-15-201 et seq.” for “Nothing contained in 17-15-201 et seq., this subchapter” in (c).

17-35-105. Penalties.

It shall be a Class A misdemeanor for a person to:

(1) Use the title of “registered interior designer”, unless registered under this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304;

(2) Present as his or her own the registration of another;

(3) Give false or forged evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or any member thereof in obtaining a registration;

(4) Falsely impersonate any other practitioner of like or different name;

(5) Use or attempt to use a registration that has been revoked; or

(6) Otherwise violate any of the provisions of this subchapter, § 17-15-201 et seq., and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 6; 2009, No. 1367, § 11; 2011, No. 859, § 6.

Amendments. The 2011 amendment inserted “this subchapter” preceding §

17-15-201 et seq.” and deleted “this subchapter” following “§ 17-15-201 et seq.” in (1) and (6).

SUBCHAPTER 3 — REQUIREMENTS

SECTION.

17-35-301. Registration of interior designers.

SECTION.

17-35-302. Requirements for registration.

17-35-301. Registration of interior designers.

(a) It is unlawful for a person who is not registered under this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq., as an interior designer to advertise as a registered interior designer or to use the title of “registered interior designer” or any other words, letters, figures, or other devices for the purpose of implying, directly or indirectly, that the person is registered under this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq.

(b) It is unlawful for a company, partnership, association, corporation, or other similar organization, after January 1, 1994, to advertise that it is in a position to provide the services of a registered interior

designer unless the persons providing the services are in the responsible charge of a registered interior designer.

(c) An applicant for registration as a registered interior designer shall establish to the satisfaction of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

- (1) Is at least twenty-one (21) years of age;
- (2) Has not been convicted of an offense that bears directly on the fitness of the applicant to be registered;
- (3) Has passed or supplied proof of passage of the examination required by this subchapter, § 17-15-201 et seq., and § 17-35-101 et seq.; and
- (4) Meets any other requirements established by the board.

History. Acts 1993, No. 847, § 9; 2009, No. 1367, § 14; 2011, No. 859, § 7.

Amendments. The 2011 amendment inserted "this subchapter" preceding "§

17-15-201 et seq." and deleted "and this subchapter" following "§ 17-35-101 et seq." in two places in (a) and in (c)(3).

17-35-302. Requirements for registration.

(a) Each applicant for registration shall provide substantial evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

(1)(A) Has passed the examination prepared and administered by the National Council for Interior Design Qualification or its successor in interest.

(B) The applicant shall provide a verification from the National Council for Interior Design Qualification or its successor in interest as proof that he or she passed the examination; and

(2) Is a:

(A) Graduate of a five-year interior design program from an accredited institution and has completed at least one (1) year of diversified and appropriate interior design experience;

(B) Graduate of a four-year interior design program or a master's degree program in interior design from an accredited institution and has completed at least two (2) years of diversified and appropriate interior design experience; or

(C) Licensed architect certified by the board.

(b) Each interior design program must be accredited by the Council for Interior Design Accreditation or its successor in interest or be an interior design program of an institution accredited by the North Central Association of Colleges and Schools, or a program determined by the board to be substantially equivalent to such accredited programs.

(c) The board may accept satisfactory evidence of registration as an interior designer in another jurisdiction if the jurisdiction's requirements for registration are equal to or greater than those required for registration in this state at the date of application.

(d) Every registration shall expire annually on a day designated by the board.

History. Acts 1993, No. 847, §§ 8, 11, 14; 2009, No. 1367, § 14; 2011, No. 859, § 8.

Amendments. The 2011 amendment subdivided (a)(2)(A).

CHAPTER 37

PEST CONTROL SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-37-106. [Repealed.]

17-37-106. [Repealed.]

Publisher's Notes. This section, concerning prior rules and regulations, was repealed by Acts 2013, No. 1147, § 1. The

section was derived from Acts 1975, No. 488, §12; A.S.A. 1947, § 77-1811.

SUBCHAPTER 2 — LICENSING

17-37-210. Bond and insurance requirements.

CASE NOTES

Suit Against Surety Proper.

Trial court erred in granting a surety's motion to dismiss buyers' claims because the buyers could sue the surety since a surety bond it had issued to an exterminating company was intended to protect members of the public from violations of the law by licensees, and its bond covered the writers of termite reports involved in the lawsuit; although the surety's contract was with the company, the buyers were members of the class of persons that it was intended to benefit, because the surety issued the bond to an unregistered fictitious name, it would be necessary to

further develop the facts as to the identity of the proper principal on the bond. *Gorman v. Gilliam*, 2010 Ark. App. 118, 374 S.W.3d 117 (2010).

Trial court erred in granting a surety's motion to dismiss a homeowner's complaint pursuant to Ark. R. Civ. P. 12(b)(6) because the homeowner alleged that a pest control company furnished to the Arkansas State Plant Board a bond issued by the surety on the company's behalf. *Russenberger v. Thomas Pest Control, Inc.*, 2012 Ark. App. 86, 394 S.W.3d 303 (2012).

CHAPTER 38

PLUMBERS

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. REGULATION BY STATE BOARD OF HEALTH.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-38-107. Service sinks.

17-38-107. Service sinks.

(a)(1) As used in this section, “commercial building” means a building for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses.

(2) “Commercial building” does not include a food service establishment.

(b) A commercial building shall not be required to include a plumbing service sink, either at construction or as part of a renovation or remodeling, if the building owner or an agent of the building owner communicates to the plumbing code official at the time of construction or renovation that the actual or proposed number of persons that will occupy the building is fifteen (15) or less.

(c) For the purposes of determining the minimum number of plumbing service sink fixtures required in a building, the number shall not be determined by using building occupancy loads as calculated in the Arkansas Fire Prevention Code.

History. Acts 2011, No. 1134, § 1.

SUBCHAPTER 2 — REGULATION BY STATE BOARD OF HEALTH

SECTION.

17-38-202. Committee of Plumbing Examiners.

17-38-202. Committee of Plumbing Examiners.

(a)(1) The State Board of Health shall appoint a Committee of Plumbing Examiners consisting of seven (7) voting members, prescribe their qualifications, and assign their duties.

(2) Qualifications of the members of the committee shall be as follows:

- (A) Two (2) of the members shall be master plumbers;
- (B) One (1) shall be a journeyman plumber;
- (C) One (1) shall be a professional engineer as defined in § 17-30-101 with special expertise in plumbing design;
- (D) Two (2) shall be consumers; and
- (E) One (1) shall be a representative of the Department of Health.

(b) The member from the department shall serve on the committee until replaced by the Director of the Department of Health.

(c) The term of office for the remaining members shall be for a staggered term of four (4) years. The board may remove a member for cause.

(d) When so directed, the committee and other employees of the department shall serve the board in an advisory capacity in the formulating of rules and regulations to be adopted by the board.

(e) Those members of the committee who are not employees of the State of Arkansas may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(f) The Director of the Plumbing and Natural Gas Section of the Department of Health shall serve as executive secretary for the committee.

History. Acts 1951, No. 200, § 3; 1975, No. 902, § 3; A.S.A. 1947, § 71-1207; Acts 1987, No. 816, § 3; 1991, No. 330, § 1; 1997, No. 250, § 144; 2011, No. 897, § 14.

Amendments. The 2011 amendment

subdivided (a) as (a)(1) and (a)(2)(A) through (a)(2)(E); inserted the introductory language of (a)(2); and inserted “as defined in § 17-30-101” in (a)(2)(C).

CHAPTER 39

POLYGRAPH EXAMINERS AND VOICE STRESS ANALYSIS EXAMINERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING.
3. VOICE STRESS ANALYSIS EXAMINERS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-39-101. Title.	SECTION.
17-39-102. Definitions.	17-39-106. Board — Powers and duties.
17-39-103. Penalties.	17-39-107. Disposition of funds.
17-39-104. Injunction.	17-39-108. [Repealed.]
17-39-105. Evidence.	17-39-109. Instrumentation.

17-39-101. Title.

This chapter shall be known and may be cited as the “Polygraph Examiners Licensing Act”.

History. Acts 1967, No. 413, § 1; A.S.A. 1947, § 71-2201; Acts 2013, No. 1216, § 1.

Amendments. The 2013 amendment

inserted “Licensing” after “Polygraph Examiners” in this section.

17-39-102. Definitions.

As used in this chapter:

(1) “Administrator” means the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies;

(2) “Board” means the Arkansas Board of Private Investigators and Private Security Agencies created by § 17-40-201;

(3) "Intern" means a person who holds a valid polygraph examiner intern license by the board;

(4) "Internship" means the study of polygraph examinations and of the administration of polygraph examinations by an intern under the personal supervision and control of a licensed polygraph examiner as authorized by the board;

(5) "Person" means any natural person, firm, association, copartnership, or corporation; and

(6) "Polygraph examiner" means any person who uses any device or instrument to test or question individuals for the purpose of verifying truth of statements.

History. Acts 1967, No. 413, § 2; 1977, No. 910, § 1; A.S.A. 1947, § 71-2202; Acts 2013, No. 1216, § 2.

inserted present (1) and present (3) and redesignated the remaining subdivisions accordingly; and rewrote present (4).

Amendments. The 2013 amendment

17-39-103. Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he or she has been or is a properly licensed polygraph examiner or intern shall be guilty of a misdemeanor. Upon conviction, that person shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both.

History. Acts 1967, No. 413, § 25; A.S.A. 1947, § 71-2224; Acts 2013, No. 1216, § 3.

Amendments. The 2013 amendment added "properly licensed" preceding "polygraph" and "intern" preceding "shall."

17-39-104. Injunction.

(a) If any person violates any provisions of this chapter, the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies, upon direction of a majority of the Arkansas Board of Private Investigators and Private Security Agencies and in the name of the State of Arkansas, through the Attorney General, shall apply in any circuit court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this chapter.

(b) Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining the continued violation. If it is established that the person has violated or is violating this chapter, the court or any judge thereof may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter.

(c) In case of violation of any order or decree issued under the provisions of this section, the court or any judge thereof may try and punish the offender for contempt of court.

(d) Proceeding under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

History. Acts 1967, No. 413, § 24; A.S.A. 1947, § 71-2223; Acts 2013, No. 1216, § 4.

Amendments. The 2013 amendment substituted “Secretary” for “Administrator” in (a).

17-39-105. Evidence.

Nothing in this chapter shall be construed as permitting the results of polygraph examinations to be introduced or admitted as evidence in a court of criminal law.

History. Acts 1967, No. 413, § 26; A.S.A. 1947, § 71-2225; Acts 2013, No. 1216, § 5.

Amendments. The 2013 amendment deleted “truth examinations or” before “polygraph examinations” in this section.

17-39-106. Board — Powers and duties.

(a) The Arkansas Board of Private Investigators and Private Security Agencies is authorized and empowered to perform and carry out the functions and duties enumerated in this chapter with respect to the licensing of polygraph examiners and to do and perform all other acts incidental and necessary to the proper performance of the functions and duties as prescribed in this chapter.

(b) The board shall issue rules consistent with the provisions of this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection therewith.

(c) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members and that the board members are fully qualified to act.

(d) The position of Administrator of the Arkansas Board of Private Investigators and Private Security Agencies is created. The Director of the Department of Arkansas State Police, or his or her designated representative, shall serve as the administrator. The administrator shall not be a member of the board, shall perform duties prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigating company.

(e) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the administrator at the designated office of the board.

(f) All official records of the board or affidavits by the administrator as to the content of the records shall be prima facie evidence of all matters required to be kept by the board.

History. Acts 1967, No. 413, §§ 4, 5; 1977, No. 910, § 2; A.S.A. 1947, §§ 71-2204, 71-2205; Acts 2013, No. 1216, § 6.

Amendments. The 2013 amendment substituted “regulations” for “rules” in (b); and added (d) through (f).

17-39-107. Disposition of funds.

(a) All fees collected under the provisions of this chapter shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

(b)(1) All funds received by the Arkansas Board of Private Investigators and Private Security Agencies shall be deposited into the State Treasury as special revenues to the credit of the fund.

(2) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

History. Acts 1967, No. 413, § 5; A.S.A. 1947, § 71-2205; Acts 2013, No. 1216, § 7.

Amendments.

The 2013 amendment substituted “deposited into the State Treasury to the credit of the Department of Arkansas

State Police Fund” for “paid to the Treasurer of State” at the end of (a), and rewrote (b).

17-39-108. [Repealed.]

Publisher's Notes. This section, concerning registration, was repealed by Acts 2013, No. 1216, § 8. The section was de-

rived from Acts 1967, No. 413, § 20; A.S.A. 1947, § 71-2219.

17-39-109. Instrumentation.

(a) Every polygraph examiner shall use an instrument which records visually, permanently, and simultaneously:

- (1) A subject's cardiovascular pattern;
- (2) Electrodermal activity; and
- (3) A subject's respiratory pattern.

(b) Patterns of other physiological changes in addition to those described in this section may also be recorded.

History. Acts 1967, No. 413, § 3; A.S.A. 1947, § 71-2203; Acts 2013, No. 1216, § 9.

inserted present (a)(2) and redesignated former (a)(2) as (a)(3).

Amendments. The 2013 amendment

SUBCHAPTER 2 — LICENSING**SECTION.**

17-39-201. License required.
17-39-202. Qualifications.
17-39-203. Original application.
17-39-204. Agent for service for nonresident interns and licensees.
17-39-205. License based on reciprocity.
17-39-206. Internship license.
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SECTION.

17-39-209. Notification of address change.
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17-39-211. Refusal, denial, suspension, revocation — Grounds.
17-39-212. Background checks.
17-39-213. Refusal, denial, suspension, revocation — Proceedings.
17-39-214. Refusal, suspension, revocation — Appeal.

SECTION.

17-39-215. Rules.

17-39-201. License required.

It shall be unlawful for any person, including a city, county, or state employee, to administer polygraph examinations or attempt to hold himself or herself out as a polygraph examiner without a license approved and issued by the Arkansas Board of Private Investigators and Private Security Agencies.

History. Acts 1967, No. 413, §§ 6, 17; A.S.A. 1947, §§ 71-2206, 71-2216; Acts 2013, No. 1216, § 10.

Amendments. The 2013 amendment deleted (b).

17-39-202. Qualifications.

(a) A person is qualified to receive a license as an examiner who:

(1) Is at least twenty-one (21) years of age;

(2) Has not been found guilty of or pleaded guilty or nolo contendere to a felony or a misdemeanor involving moral turpitude;

(3) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his or her application; and

(4) Is a graduate of a polygraph examiners course approved by the Arkansas Board of Private Investigators and Private Security Agencies and has satisfactorily completed not less than six (6) months of internship training.

(b) Prior to the issuance of a license, the applicant must furnish evidence of a surety bond or insurance policy to the board. The surety bond or insurance policy shall be in the sum of five thousand dollars (\$5,000). The bond shall be conditioned that the obligor therein will pay to the extent of the face amount of the surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him or her in the course of his or her examinations.

History. Acts 1967, No. 413, § 7; A.S.A. 1947, § 71-2207; Acts 1993, No. 1219, § 7; 2013, No. 1216, § 11.

Amendments. The 2013 amendment deleted (a)(2) and (a)(6); and redesignated the remaining subdivisions accordingly;

substituted "convicted of a" for "found guilty of or pleaded guilty or nolo contendere to a" in present (a)(2); deleted the last sentence in present (a)(4); and, in (b), substituted "one" for "five" and "(\$1,000)" for "(\$5,000)."

17-39-203. Original application.

(a) Applications for original licenses shall be made to the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies in writing under oath on forms prescribed by the

Arkansas Board of Private Investigators and Private Security Agencies and shall be accompanied by the required fee, which is not refundable.

(b) Any such application shall require the information that in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

History. Acts 1967, No. 413, § 9; A.S.A. 1947, § 71-2208; Acts 2013, No. 1216, § 12.

Amendments. The 2013 amendment substituted "Administrator" for "Secretary" in (a).

17-39-204. Agent for service for nonresident interns and licensees.

(a) In addition to other application requirements, a licensee or intern who does not maintain a place of business in Arkansas shall file with the Arkansas Board of Private Investigators and Private Security Agencies an irrevocable consent that:

(1) Actions against the applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose; and

(2) Process on the action may be served on the applicant by leaving two (2) copies thereof with the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies.

(b) The consent shall stipulate and agree that the service of process shall be taken and held to be valid and binding for all purposes.

(c) The administrator shall immediately send one (1) copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

History. Acts 1967, No. 413, § 10; A.S.A. 1947, § 71-2209; Acts 2013, No. 1216, § 13.

Amendments. The 2013 amendment substituted "Agent for service for nonresident interns and licensees" for "Nonresident applicants" in the section heading;

substituted "In addition to other ... business in Arkansas" for "Each nonresident applicant for an original license or a renewal license" in (a); substituted "Administrator" for "Secretary" in (a)(2) and (c); and deleted (d).

17-39-205. License based on reciprocity.

An applicant who is a polygraph examiner licensed under the laws of another state of the United States may be issued a two-year license by the Arkansas Board of Private Investigators and Private Security Agencies upon payment of a fee of one hundred and twenty dollars (\$120) and the production of satisfactory proof that the licensee meets the requirements of this section:

- (1) The applicant must meet the requirements of §17-39-202;
- (2) The applicant is at least twenty-one (21) years of age;
- (3) The requirements of §17-39-202(3) and (4) may be waived by the board for the licensing of polygraph examiners in the particular state or territory of the United States were at the date of the applicant's

licensing therein substantially equivalent to the requirements now in force in this state;

(4) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of that state for at least two (2) years prior to his or her application for a license under this chapter; and

(5) The other state grants similar reciprocity to license holders of this state.

History. Acts 1967, No. 413, § 11; A.S.A. 1947, § 71-2210; Acts 1993, No. 1219, § 8; 2013, No. 1216, § 14.

Amendments. The 2013 amendment substituted “License based on reciprocity” for “Reciprocity” in the section heading; in the introductory language, deleted “or territory” following “laws of another state,” substituted “issued a two-year license by”

for “issued a license without examination by,” deleted “in its discretion,” substituted “one hundred and twenty dollars (\$120)” for “sixty dollars (\$60.00),” and added “the licensee meets the requirements of this sections”; rewrote (2); inserted “§17-39-202 (3) and (4) may be waived by the board” in (3); and deleted (6).

17-39-206. Internship license.

(a) Upon approval by the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies, the administrator shall issue an internship license to an intern, provided that he or she applies for the license and pays the required fee within ten (10) days prior to the commencement of his or her internship. The application shall contain such information as may be required by the Arkansas Board of Private Investigators and Private Security Agencies.

(b) A person is qualified to receive an internship license if he or she:

(1) Is at least twenty-one (21) years of age;

(2) Has not been found guilty of or pleaded guilty or nolo contendere to any felony or a misdemeanor involving moral turpitude;

(3) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his or her application; and

(4) Is a graduate of a polygraph examiners course approved by the board.

(c) An internship license shall be valid for the term of twelve (12) months from the date of issue. It may be renewed for any term not to exceed six (6) months upon good cause shown to the board.

History. Acts 1967, No. 413, § 12; A.S.A. 1947, § 71-2211; Acts 2013, No. 1216, § 15.

Amendments. The 2013 amendment, in (a), inserted “Administrator of the” preceding “Arkansas Board,” substituted “administrator” for “Secretary of the Arkansas Board of Private Investigators and

Private Security Agencies,” “an intern” for “a trainee,” and “Arkansas Board of Private Investigators and Private Security Agencies” for “board”; added present (b); redesignated former (b) as present (c); deleted “extended or” before “renewed” in present (c); deleted former (c).

17-39-207. Examination — Fees.

The fees to be paid for licenses shall be as follows:

- (1) For an original two-year polygraph examiner's license, one hundred twenty dollars (\$120);
- (2) For a one-year or less internship license, thirty dollars (\$30.00);
- (3) For the issuance of a duplicate polygraph examiner's license or internship license, fifteen dollars (\$15.00);
- (4) For a polygraph examiner's two-year renewal license, fifty dollars (\$50.00);
- (5) For the renewal of an internship license past six (6) months, twenty-five dollars (\$25.00); and
- (6) For the issuance of an optional wallet-size polygraph examiner licensee or intern photo identification card, fifteen dollars (\$15.00).

History. Acts 1967, No. 413, § 13; A.S.A. 1947, § 71-2212; Acts 2013, No. 1216, § 16.

Amendments. The 2013 amendment deleted (a), (c) and the (b) designation; in (1), inserted "two-year" and substituted "one hundred twenty dollars (\$120)" for "sixty dollars (\$60.00)"; substituted "a one-year or less internship" for "an intern-

ship" in (2); in (3), inserted "or internship license" and substituted "fifteen dollars (\$15.00)" for "ten dollars (\$10.00)"; in (4), inserted "two-year" and substituted "fifty dollars (\$50.00)" for "twenty five dollars (\$25.00)"; in (5), deleted "extension or" and inserted "past six (6) months"; and rewrote (6).

17-39-208. Display of license and signature.

A license or the photo identification card issued by the Arkansas Board of Private Investigators and Private Security Agencies must be prominently displayed at the place of business of the polygraph examiner or at the place of internship.

History. Acts 1967, No. 413, § 14; A.S.A. 1947, § 71-2213; Acts 2013, No. 1216, § 17.

Amendments. The 2013 amendment deleted (b); and substituted "or the photo

identification card issued by the Arkansas Board of Private Investigators and Private Security Agencies" for "or duplicate license."

17-39-209. Notification of address change.

Notice in writing shall be given to the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies by the licensed examiner of any change of principal business location within thirty (30) days of the time he or she changes the location.

History. Acts 1967, No. 413, § 15; A.S.A. 1947, § 71-2214; Acts 2013, No. 1216, § 18.

Amendments. The 2013 amendment deleted (b); and substituted "Administrator" for "Secretary."

17-39-210. Expiration and renewal.

(a) Each polygraph examiner's license shall be issued for the term of two (2) years and, unless suspended or revoked, shall be renewed with such documentation as may be prescribed by the Arkansas Board of Private Investigators and Private Security Agencies.

(b) A polygraph examiner whose license has expired less than six (6) months may renew the license by making a renewal application and paying the renewal fees and a late fee of twenty dollars (\$20.00).

(c) However, any polygraph examiner's license that has been expired for more than six (6) months shall be deemed permanently expired, and the licensee shall begin the process again as a new applicant.

(d) The calculation of the late fee or expiration time may be waived for a person who demonstrates that he or she was on active duty with the armed forces of the United States or the National Guard at the time of expiration.

(e) The requirements, as set out by the board, must be met before renewal, including:

(1) Payment of all necessary fees; and

(2) Providing the board with proof of continuing polygraph examiner education of at least fourteen (14) hours received in the most recent two-year period by a training course approved by the board.

History. Acts 1967, No. 413, § 16; in (a), substituted "two (2) years" for "one (1) year" and "with such documentation as may be" for "annually as"; rewrote (b), (c), and (d); and added (e).
A.S.A. 1947, § 71-2215; Acts 2013, No. 1216, § 19.

Amendments. The 2013 amendment,

17-39-211. Refusal, denial, suspension, revocation — Grounds.

The Arkansas Board of Private Investigators and Private Security Agencies may deny, suspend, or revoke a license on any one (1) or more of the following grounds:

(1) Failure to inform a subject to be examined as to the nature of the examination;

(2) Failure to inform a subject to be examined that his or her participation in the examination is voluntary;

(3) Any violation of law or the rules of the board or failure to meet the qualifications for licensure;

(4) Material misstatement in any application for license under this chapter;

(5) Any misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or interns;

(6) Demonstration of unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;

(7) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter;

(8) Willfully aiding or abetting another in the violation of this chapter or rule issued pursuant to it;

(9) Failure within a reasonable time to provide information requested by the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies as the result of a formal complaint to the board, which would indicate a violation of this chapter; or

(10) Failure to inform the subject of the polygraph examination of the results of the examination if so requested.

History. Acts 1967, No. 413, § 18; A.S.A. 1947, § 71-2217; Acts 2013, No. 1216, § 20.

Amendments. The 2013 amendment, in the introductory language, inserted "denial" following "Refusal" and substituted "Agencies may deny, suspend" for "Agencies may refuse to issue or may suspend"; deleted former (4), (5), and (10);

inserted present (3) and redesignated the remaining subdivisions accordingly; rewrote (4); in (5), substituted "Any" for "Willful" and "interns" for "trainees"; deleted "or any regulation" in (8); substituted "Administrator" for "Secretary" in (9); and inserted "polygraph examination of the" in (10).

17-39-212. Background checks.

(a) Each first-time applicant and applicant for license renewal shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the Arkansas Board of Private Investigators and Private Security Agencies and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

History. Acts 1967, No. 413, § 19; A.S.A. 1947, § 71-2218; Acts 2013, No. 1216, § 22.

Amendments. The 2013 amendment rewrote this section and the section heading.

17-39-213. Refusal, denial, suspension, revocation — Proceedings.

(a)(1) When there is cause to deny an application or suspend or revoke the license of any polygraph examiner, the Arkansas Board of Private Investigators and Private Security Agencies not less than thirty (30) days before denial, suspension, or revocation action is taken, shall notify the person in writing, in person, or by certified mail at the last address supplied to the board by the person. This notice shall include notification of the impending denial, suspension, or revocation, the reasons therefor, and of his or her right to an administrative hearing for

the purpose of determining whether or not the evidence is sufficient to warrant the denial, suspension, or revocation action proposed to be taken by the board.

(2) Upon receipt by the board of the written request, an opportunity for an administrative hearing shall be afforded as early as is practicable.

(3) The administrative hearing in those cases shall be before the board.

(b)(1) The board shall conduct the administrative hearings, and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc.

(2) On the basis of the evidence submitted at the hearing, the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies shall take whatever action he or she deems necessary in denying the application or suspending or revoking the license.

(c)(1) Upon the revocation or suspension of any license, the licensee shall immediately surrender the license or licenses to the administrator of the board.

(2) Failure of a licensee to do so shall be a violation of this chapter, and upon conviction the licensee shall be subject to the penalties set forth in § 17-39-103.

(3) At any time after the suspension or revocation of any license, the administrator shall restore it to the former licensee upon the written recommendations of the board.

History. Acts 1967, No. 413, §§ 21, 23; A.S.A. 1947, §§ 71-2220, 71-2222; Acts 2013, No. 1216, § 23.

Amendments. The 2013 amendment inserted "denial" following "Refusal" in the section heading; in (a)(1), substituted "deny" for "refuse" and "denial" for "refusal"; deleted (a)(2) and (a)(4) and redesignated the remaining subdivisions accordingly; deleted "within the twenty-day period as set out in subdivision (a)(2) of

this section" in present (a)(2); in (b)(2), substituted "Administrator of the Arkansas Board of Private Investigators and Private Security Agencies" for "board," "he and she" for "it," and "denying" for "refusing"; substituted "administrator of the board" for "Secretary of the Arkansas Board of Private Investigators and Private Security Agencies" in (c)(1); and substituted "administrator" for "secretary" in (c)(3).

17-39-214. Refusal, suspension, revocation — Appeal.

(a) Any person dissatisfied with the action of the Arkansas Board of Private Investigators and Private Security Agencies in denying, suspending, or revoking his or her license may appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The board shall be represented in such appeals by the Attorney General or any of his or her assistants.

History. Acts 1967, No. 413, § 22; A.S.A. 1947, § 71-2221; Acts 2013, No. 1216, § 24.

Amendments. The 2013 amendment rewrote (a); deleted (b), (c), and (e) and redesignated the remaining subsection ac-

cordingly; and, in present (b), deleted preceding "Attorney General" and substituted "his or her" for "their."

17-39-215. Rules.

The Arkansas Board of Private Investigators and Private Security Agencies may promulgate rules to permit the efficient administration of this subchapter.

History. Acts 2013, No. 1216, § 25.

SUBCHAPTER 3 — VOICE STRESS ANALYSIS EXAMINERS

SECTION.

- 17-39-301. Definitions.
- 17-39-304. Application for license — Proof and fee.
- 17-39-305. Fees.
- 17-39-306. Grounds for denying, suspending, or revoking licenses.
- 17-39-307. Rules.

SECTION.

- 17-39-308. Conduct of voice stress analysis.
- 17-39-309. Background checks.
- 17-39-310. Penalties.
- 17-39-311. Injunction.
- 17-39-312. Evidence.
- 17-39-313. Board — Powers and duties.

17-39-301. Definitions.

As used in this subchapter:

- (1) "Administrator" means the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies;
- (2) "Board" means the Arkansas Board of Private Investigators and Private Security Agencies created by § 17-40-201;
- (3) "Voice stress analysis" means the procedure for analyzing the responses of an individual to a specific set of questions;
- (4) "Voice stress analysis examiner" means an individual who has been trained in the operation of a voice stress analysis machine and who maintains a current certificate from a recognized training facility; and
- (5) "Voice stress analysis machine" means a device which has the ability to electronically analyze the responses of an individual to a specific set of questions and to record the analysis, both digitally and on a graph.

History. Acts 1987, No. 858, § 1; 2013, No. 1472, § 1.

inserted present (1) and (2) and redesignated the remaining subdivisions accordingly.

Amendments. The 2013 amendment

17-39-304. Application for license — Proof and fee.

Any person desiring to be licensed as a voice stress analysis examiner shall make application for licensure to the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies and shall submit with the application proof satisfactory to the board that the applicant:

- (1) Is at least twenty-one (21) years of age;

- (2) Is an Arkansas resident;
- (3) Is a person of honesty, truthfulness, integrity, and moral fitness;
- (4) Has not pleaded guilty or nolo contendere to or been found guilty of a felony or a misdemeanor involving moral turpitude;
- (5) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has had five (5) years of investigative experience with a law enforcement agency;
- (6) Has completed a course of training offering a certification in the operation of the voice stress analysis machine that has been approved by the board and submits a copy of the certification with the application; and
- (7) Has posted a surety bond or insurance policy in the amount of five thousand dollars (\$5,000) or proof that the individual is covered by a business insurance policy.

History. Acts 1987, No. 858, § 3; 1989, No. 410, § 1; 1993, No. 1219, § 9; 2013, No. 1472, § 2.

Amendments. The 2013 amendment, in the introductory paragraph, removed the (a) designation and inserted "Administrator of the" preceding "Arkansas"; inserted present (2) and redesignated the remaining subdivisions accordingly; de-

leted former (a)(4)(B); substituted "pleaded guilty or nolo contendere to or been found guilty of a" for "been convicted of a" in (4); inserted "Officers" following "Admissions" in (5); inserted "that has been approved by the board" in (6); substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" in (7); and deleted former (b).

17-39-305. Fees.

(a)(1) Except as provided under subdivision (a)(2) of this section, the applicant for licensure under this subchapter shall pay the following fees:

- (A) For an original two-year voice stress analysis examiner's license, one hundred twenty dollars (\$120);
- (B) For a two-year renewal of a voice stress analysis examiner's license, fifty dollars (\$50.00);
- (C) For the issuance of an optional wallet-sized voice stress analysis examiner's license photo identification card, fifteen dollars (\$15.00); and
- (D) For the issuance of a duplicate voice stress analysis examiner's license, ten dollars (\$10.00).

(2) A certified law enforcement officer who is a full-time employee of a law enforcement agency and who is applying for his or her license for the purpose of full-time employment is not required to pay the fee under subdivisions (a)(1)(A) and (B) of this section.

(b) All fees collected under this subchapter shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

(c)(1) All funds received by the board shall be deposited into the State Treasury as special revenues to the credit of the fund.

(2) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

History. Acts 1987, No. 858, §§ 3, 4; 2013, No. 1472, § 3.

Amendments. The 2013 amendment rewrote (a) and added (b) and (c).

17-39-306. Grounds for denying, suspending, or revoking licenses.

The board may deny, suspend, or revoke a license on any of the following grounds:

- (1) For failing to inform a subject to be examined as to the nature of the examination;
- (2) For failing to inform a subject to be examined that his or her participation in the examination is voluntary;
- (3) Any material misstatement in the application for original license or in the application for any renewal license under this subchapter;
- (4) Any willful disregard or violation of this subchapter or of any rule issued pursuant to this subchapter, including, but not limited to, willfully making a false report concerning an examination for voice stress analysis examination purposes;
- (5) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (6) For making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;
- (7) For having demonstrated unworthiness or incompetency to act as a voice stress analysis examiner;
- (8) For allowing one's license under this subchapter to be used by any other person;
- (9) For willfully aiding or abetting another in the violation of this subchapter or any regulation or rule issued pursuant to this subchapter;
- (10) For failing to maintain the requirements for licensure with the board;
- (11) For failing, within a reasonable time, to provide information requested by the Secretary of the board as the result of a formal complaint to the board which would indicate a violation of this subchapter; or
- (12) For failing to inform the subject of the voice stress analysis of the results of the examination if so requested.

History. Acts 1987, No. 858, § 7; 2013, No. 1472, § 4.

Amendments. The 2013 amendment substituted "denying" for "refusing to issue" in the section heading; in the introductory language, substituted "board may deny" for "Arkansas Board of Private Investigators and Private Security Agencies may refuse to issue or may" and deleted

"one (1) or more" following "any"; deleted "regulation or" preceding "rule" in (4); deleted "as defined by § 17-39-301" in (7); substituted "other person" for "unlicensed person in violation of the provisions of this subchapter" in (8); rewrote (10); and substituted "board" for "Arkansas Board of Private Investigators and Private Security Agencies" in (11).

17-39-307. Rules.

The board may promulgate rules to permit the efficient administration of this subchapter.

History. Acts 1987, No. 858, § 5; 2013, No. 1472, § 5.

Amendments. The 2013 amendment rewrote the section.

17-39-308. Conduct of voice stress analysis.

- (a) A voice stress analysis shall be conducted only in person.
- (b) The test is to be conducted through an in-person interview, and written permission for the test must be obtained from the person to be tested.
- (c)(1) The examiner shall obtain the permission of the individual to be tested to interview and record the responses of the individual and to analyze the individual responses.
- (2) In each case, the individual's verbal permission shall be recorded as a part of the interview.
- (d)(1) A certified law enforcement officer who is a full-time employee of a law enforcement agency and who is acting in the course of his or her employment for the law enforcement agency may conduct a voice stress analysis from a legally recorded conversation.
- (2) If the test is conducted under subdivision (d)(1) of this section:
 - (A) The recorded conversation may be recorded:
 - (i) In person; or
 - (ii) By telephone; and
 - (B) The examiner shall comply with subsection (c) of this section.

History. Acts 1987, No. 858, § 6; 2013, No. 1472, § 6.

Amendments. The 2013 amendment deleted "or from a legally recorded conver-

sation" from the end of (a); deleted (b)(2); deleted "In either event" at the beginning of (c)(1); and added (d).

17-39-309. Background checks.

- (a) Each first-time applicant and each applicant for license renewal shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Identification Bureau and the Federal Bureau of Investigation.
- (b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.
- (c) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.
- (d) Upon completion of the criminal background check, the Identification Bureau shall forward to the board all releasable information obtained concerning the applicant.
- (e) This section does not apply to a certified law enforcement officer who is a full-time employee of a law enforcement agency and who is

applying for his or her license for the purpose of the full-time employment with the law enforcement agency.

History. Acts 2013, No. 1472, § 7.

17-39-310. Penalties.

A person who violates any provision of this chapter or a person who falsely states or represents that he or she has been or is a properly licensed voice stress analysis examiner shall be guilty of a misdemeanor. Upon conviction, that person shall be punished by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both.

History. Acts 2013, No. 1472, § 7.

17-39-311. Injunction.

(a) If a person violates any provisions of this chapter, the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies, upon the direction of a majority of the board and in the name of the State of Arkansas, through the Attorney General, shall apply in any circuit court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this chapter.

(b) Upon the filing of a verified petition in the court, a judge of the court, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction without notice or bond enjoining the continued violation. If it is established that the person has violated or is violating this chapter, a judge of the court may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter.

(c) In case of violation of any order or decree issued under the provisions of this section, a judge of the court may sentence the offender for contempt of court.

(d) Punishment for violation under this section shall be in addition to, but not in lieu of, all other remedies and penalties provided by this chapter.

History. Acts 2013, No. 1472, § 7.

17-39-312. Evidence.

This chapter shall not be construed as permitting the results of voice stress analysis examinations to be introduced or admitted as evidence into a court of criminal law.

History. Acts 2013, No. 1472, § 7.

17-39-313. Board — Powers and duties.

(a) The board is authorized and empowered to perform and carry out the functions and duties enumerated within this chapter with respect to the licensing of voice stress analysis examiners and to perform all other acts incidental and necessary to the proper performance of the functions and duties as prescribed in this chapter.

(b) The board shall issue rules consistent with the provisions of this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection therewith.

(c) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be *prima facie* proof that the signatures are the genuine signatures of the board members and that the board members are fully qualified to act.

(d) The position of Administrator of the Arkansas Board of Private Investigators and Private Security Agencies is created. The Director of the Department of Arkansas State Police, or his or her designated representative, shall serve as the administrator. The administrator shall not be a member of the board, shall perform such duties as may be prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigating company.

(e) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the administrator at the designated office of the board.

(f) All official records of the board or affidavits by the administrator as to the content of the records shall be *prima facie* evidence of all matters required to be kept by the board.

History. Acts 2013, No. 1472, § 7.

CHAPTER 40

PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-40-103. Exemptions.

17-40-103. Exemptions.

(a) This chapter does not apply to:

(1) A person employed exclusively and regularly by one (1) employer in connection with the affairs of that employer only and where there exists an employer-employee relationship;

(2) An officer or employee of the United States, of this state, or of a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) A person who has part-time or full-time employment as a law enforcement officer and who is certified by the Arkansas Commission on Law Enforcement Standards and Training as a law enforcement officer and receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if the person is:

(A)(i) Employed in an employee-employer relationship; or

(ii) Employed on an individual contractual basis; and

(B) Not in the employ of another law enforcement officer;

(4) A person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) Consumer reporting agencies as defined in 15 U.S.C. § 1681 et seq.;

(6) An attorney at law in performing his or her duties or an employee of an attorney at law, only in connection with providing investigative services to the attorney and his or her practice;

(7) Admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the state performing duties in connection with insurance transacted by them;

(8) An officer, employee, or agent of a communications common carrier, as defined in 47 U.S.C. § 153(11), while engaged in the normal course of business of the carrier or protecting the carrier or a user of the services of that carrier from fraudulent, unlawful, or abusive use of services;

(9) A professional engineer registered with the State Board of Licensure for Professional Engineers and Surveyors engaged in providing investigative services as outlined in this chapter;

(10) A person who or business which sells or manufacturers alarm systems, unless such a person or business performs any service as described in § 17-40-102(5);

(11) Installation, servicing, or responding to fire alarm systems or any alarm device which is installed in a motor vehicle, aircraft, or boat;

(12) Installation of an alarm system on property owned by or leased to the installer;

(13) Installation of fixed fire extinguisher systems by persons licensed by the Arkansas Fire Protection Licensing Board;

(14) Installation of the raceway, conductors, and components of a fire alarm system by an entity holding a valid Arkansas contractor's license, electrical classification, when the systems are furnished by alarm systems companies licensed under this chapter, provided the alarm systems company:

(A) Furnishes a system designed to comply with applicable codes and standards;

- (B) Furnishes the installing contractor with wiring diagrams and specifications for the required conductors;
- (C) Provides periodic job site inspections of the installation in progress;
- (D) Connects and installs the system components;
- (E) Tests the completed installation in compliance with NFPA 72, providing the owner's representative and the local fire marshal with test documentation; and
- (F) Instructs the system owner's representative and provides operator manuals for the installed system; and

(15) Alarm system agents, alarm system apprentices, and alarm system technicians for class E-S and F-S licenses shall be exempt from the requirements for National Burglar and Fire Alarm Association Level 1 and 2 certification.

(16) "An agent, employee, or sales representative of an alarm system company, if the agent, employee, or sales representative:

- (A) Does not alter, install, maintain, move, repair, replace, service, or reconfigure an alarm system or any individual component connected to an alarm system at an end-user's premises; and
- (B) Is not granted access to passwords or codes which can be used to arm or disarm the system installed at specific end-user premises; and

(17) A certified public accountant licensed by the state performing his or her duties, only in connection with providing investigative services, and all employees, independent contractors, or agents acting under the supervision of a certified public accountant licensed by the state, only in connection with providing investigative services to the certified public accountant and his or her practice.

(b) Although under the provisions of this chapter the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a firearm in the course and scope of his or her duties is required to make application for a security officer commission for the individual according to the provisions of this chapter, the security department of a private business shall not be required to make application to the Arkansas Board of Private Investigators and Private Security Agencies for any license under this chapter.

(c) Notwithstanding any other provision of this chapter, employees of a licensee who are employed exclusively as undercover agents shall not be required to register with the Arkansas Board of Private Investigators and Private Security Agencies under this chapter.

History. Acts 1977, No. 429, §§ 3, 38; 1979, No. 907, § 4; 1983, No. 899, § 3; 1985, No. 756, § 1; A.S.A. 1947, §§ 71-2124, 71-2159; Acts 1987, No. 630, § 1; 1989, No. 651, § 2; 1989, No. 926, § 2;

1991, No. 709, § 1; 1999, No. 1493, § 2; 2001, No. 1474, § 4; 2013, No. 1475, § 1.
Amendments. The 2013 amendment added (a)(16) and (17).

CHAPTER 42

REAL ESTATE LICENSE LAW

SUBCHAPTER.

1. REAL ESTATE LICENSE LAW — GENERAL PROVISIONS.
3. LICENSES.
4. APPLICABILITY — REAL ESTATE RECOVERY FUND — DISCIPLINARY ACTIONS.
5. RENEWAL OF LICENSES.

SUBCHAPTER 1 — REAL ESTATE LICENSE LAW — GENERAL PROVISIONS

SECTION.

17-42-103. Definitions.
17-42-104. Exemptions.
17-42-105. Violations and criminal sanctions.
17-42-106. Injunction.

SECTION.

17-42-107. Capacity to sue and be sued.
17-42-109. Civil penalties for engaging in unlicensed real estate activity.
17-42-110. Broker's price opinions.

17-42-103. Definitions.

As used in this chapter:

- (1)(A) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker.
- (B) An associate broker shall have no supervisory authority over any other licensee;
- (2) "Branch office" means a real estate principal broker's office other than his or her principal place of business;
- (3) "Classroom hour" means a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;
- (4) "Continuing education" means postlicensure education derived from participation in courses in real estate-related subjects that have been approved by the State Board of Private Career Education or that are not required to be approved by the board;
- (5) "Continuing education unit" means a period of ten (10) contact hours of actual classroom instruction with the instructor present;
- (6)(A) "Executive broker" means an individual who:
 - (i) Has a broker's license;
 - (ii) Is employed by a principal broker or associated with a principal broker as an independent contractor; and
 - (iii) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker.
- (B) An executive broker may supervise associate brokers and salespersons;
- (7)(A) "Licensee" means an individual who holds any type of license issued by the Arkansas Real Estate Commission.

(B) "Licensee" includes a principal broker, an executive broker, an associate broker, and a salesperson.

(C) This chapter does not preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(8) "Participate in a real estate auction" means to do any act or conduct for compensation or the expectation of compensation and designed, intended, or expected to affect the bidding or results of a real estate auction, including without limitation serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(9) "Principal broker" means an individual expecting to act or acting for another for a fee, commission, or other consideration who:

(A) Sells, exchanges, purchases, rents, or leases real estate;

(B) Offers to sell, exchange, purchase, rent, or lease real estate;

(C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;

(D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;

(F) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements to real estate;

(G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;

(H) Advertises or holds himself or herself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;

(J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;

(K) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such a purpose or for referral of information concerning the real estate to brokers, or both; or

(L) Performs any of the acts described in this subdivision (9) as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(10)(A) "Real estate" means an interest in real property.

(B) "Real estate" includes without limitation a leasehold, time-share interval, or an interest in real property that is purchased or sold in connection with the purchase or sale of all or part of the assets, stock, or other ownership interest of a business or other organization;

(11) "Salesperson" means an individual who:

- (A) Has a salesperson's license;
- (B) Is employed by a principal broker or is associated with a principal broker as an independent contractor; and
- (C) Participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker;

(12) "Unlicensed real estate activity" means offering or engaging in any practice, act, or operation set forth in subdivision (9) of this section without a valid active Arkansas license issued by the commission; and

(13) "Broker's price opinion" means an estimate prepared by a licensee that details the probable selling price of real estate and provides a varying level of detail about the real estate's condition, market, and neighborhood, and information about sales of comparable real estate.

History. Acts 1993, No. 690, § 3; 2007, No. 263, § 1; 2011, No. 762, § 1; 2011, No. 865, § 1.

Amendments. The 2011 amendment by No. 762 added (15) [13].

The 2011 amendment by No. 865 deleted former (2) and (5), added present

(12), and redesignated the remaining subdivisions accordingly; substituted "State Board of Private Career Education" for "board" in present (4); substituted "Arkansas Real Estate Commission" for "commission" in present (7)(A); and rewrote present (10)(A) and (10)(B).

17-42-104. Exemptions.

(a) This chapter does not apply to:

(1) A person not licensed under this chapter who performs any of the acts described in § 17-42-103(9) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact does not receive or have an expectation of receiving a fee, commission, or other consideration, directly or indirectly, for performing the act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) A person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) A person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) A person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person performs one (1) or more of the following activities:

- (A) Delivering a lease application, lease, or an amendment to a lease application or lease to any person;
- (B) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;
- (C) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;
- (D) Acting under the direct written instructions of the principal broker, real estate firm, or owner:
 - (i) Showing a rental unit to any person; or
 - (ii) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or
- (E) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) An officer or employee of a federal agency or state government, or any political subdivision, in the performance or conduct of his or her official duties;

(8) A multiple listing service wholly owned by a nonprofit organization or association of real estate licensees;

(9) An officer of a corporation, a member or manager of a limited liability company, a partner of a partnership, or the equivalent of an officer of another form of business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the acts are not performed by the officer, member, or partner for or in expectation of a commission or other compensation resulting solely from a successful transaction, not including profits and distributions of the entity; or

(10) A person employed primarily at a salaried or hourly rate by a corporation, limited liability company, partnership, or other business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the:

- (A) Acts are not performed by the employee for or in expectation of a commission or other compensation resulting solely from a successful transaction;
- (B) Primary business activity of both the entity and affiliated entity is not ownership or acquisition of real estate; and
- (C) Employee is not providing real estate services to or on behalf of more than one (1) entity not affiliated by common ownership.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is

employed in a non-real estate-related field and is only a part-time broker.

History. Acts 1993, No. 690, § 4; 2007, No. 263, § 2; 2011, No. 865, § 2; 2011, No. 883, § 1.

A.C.R.C. Notes. Acts 2011, No. 883, § 1 omitted language without striking through previously existing language in amending §17-42-104(a)(9). A.C.R.C. staff has determined that the omitted language

was intended to be repealed language and § 17-42-104(a)(9) is set out to reflect that intent.

Amendments. The 2011 amendment by No. 865 substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (a)(1).

The 2011 amendment by No. 883 re-wrote (a)(9); and added (a)(10).

17-42-105. Violations and criminal sanctions.

(a) It is unlawful to:

- (1) Engage in unlicensed real estate activity; or
- (2) Violate this chapter:

(A) Individually; or

(B) As an officer, agent, or member of a firm, corporation, partnership, copartnership, association, limited liability company, or other entity by participating in or being an accessory to a violation of this chapter by the firm, corporation, partnership, copartnership, association, limited liability company, or other entity.

(b) A commissioner of the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, a commissioner's designee, the Executive Director's designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings for a violation of this chapter without filing a bond for costs.

(c) The prosecuting attorney for each county shall prosecute any violation of this chapter that occurs in his or her county.

(d) A violation of this chapter is a Class D felony.

History. Acts 1993, No. 690, § 20; 2011, No. 865, § 3.

Amendments. The 2011 amendment added “Violations and” to the section heading; combined and rewrote former (a)

and (b) as (a) and redesignated the remaining subsections accordingly; substituted “a commissioner's designee, the Executive Director's designee” for “or other designee” in present (b); and added (d).

17-42-106. Injunction.

(a) If the Arkansas Real Estate Commission has reason to believe that a person has violated a provision of this chapter, the commission or its designee may bring an action in the circuit court of any county in which the person resides or does business to enjoin the person from continuing, engaging in, or doing any act or acts in furtherance of the violation.

(b) In any action under this section, the circuit court of any county in which the person resides or does business may enter a preliminary injunction, a final injunction, or an order for any other appropriate relief.

History. Acts 1993, No. 690, § 21; **Amendments.** The 2011 amendment 2011, No. 865, § 4. rewrote the section.

17-42-107. Capacity to sue and be sued.

(a) An action or suit shall not be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(9) unless at the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

(1) The person holds an active license under this chapter as a principal broker; or

(2) The person or other legal entity was the owner of the real estate firm that contracted for or otherwise performed the acts for the compensation that is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the commission at the time of the acts.

(b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.

(c)(1) As used in this subsection, “systematic residential rental property inspection program” means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.

(2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:

(A) When acting as an agent for service of process for a nonresident owner;

(B) Arising from the agent’s performance of duties as the agent for service of process; and

(C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.

(3) This subsection supersedes any provision of common law to the contrary.

History. Acts 1993, No. 690, § 8; 2001, No. 1172, § 1; 2005, No. 1840, § 1; 2011, No. 865, § 5.

Amendments. The 2011 amendment substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (a).

17-42-109. Civil penalties for engaging in unlicensed real estate activity.

(a) If after notice and a hearing in accordance with this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has engaged in unlicensed real estate activity, the commission may impose a civil penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to engage in or offers to perform any practice, act, or operation set forth in § 17-42-103(9) without a license is *prima facie* evidence that the person is engaged in unlicensed real estate activity.

(c) In addition to civil penalties imposed under this section, the commission may require the person engaged in unlicensed real estate activity to reimburse any compensation, fees, or other remuneration collected during the unlicensed real estate activity.

History. Acts 2011, No. 865, § 6.

17-42-110. Broker's price opinions.

(a) A licensee may prepare, provide, and collect a fee for issuing a broker's price opinion for:

(1) An existing or potential seller for the purposes of listing and selling real estate;

(2) An existing or potential buyer of real estate;

(3) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or

(4)(A) An existing or potential lienholder.

(B) However, a broker's price opinion prepared for an existing or potential lienholder in conjunction with the purchase of a buyer's principal residence shall not be used as the primary basis to determine the value of the buyer's principal residence for the purpose of a loan origination of a residential mortgage loan secured by the buyer's principal residence.

(b) The Arkansas Real Estate Commission may prescribe rules for the preparation and issuance of a broker's price opinion.

(c) Licensees shall have the authority to prepare and provide broker price opinions pursuant to this section, notwithstanding the provisions of § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(d) A broker's price opinion or market analysis issued by a real estate licensee shall not contain the terms "market value", "appraised value", or "appraisal".

History. Acts 2011, No. 762, § 2.

SUBCHAPTER 3 — LICENSES**SECTION.**

17-42-301. License required — Violations.
17-42-303. Education and experience requirements.
17-42-307. Expiration and renewal.
17-42-312. Investigation of complaint — Citations — Penalties.

SECTION.

17-42-316. Agency relationship and duties generally.
17-42-317. Representing seller or lessor in an agency relationship.
17-42-318. Representing buyer or lessee in an agency relationship.
17-42-319. Waiver of agency duties.

A.C.R.C. Notes. Acts 2013, No. 281, § 4, provided: "Effective January 1, 2014, the Arkansas Real Estate Commission has the authority to issue and renew real estate education licenses under this sub-

chapter. It is the intent of this section to cure any gap in applicable law resulting from the transition from licensing under prior law with the State Board of Private Career Education to this subchapter."

17-42-301. License required — Violations.

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(9), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e)(1) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Arkansas Real Estate Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(9) hold an active license under this chapter.

(2) The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(9) only through a principal broker and a licensee employed by or associated with the principal broker that holds an active license issued by the commission at the time of performing the contract or activities.

(f) The commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon

the death, resignation, termination, or incapacity of the principal broker or upon the closing of a real estate firm, under the direction of a person approved by the commission, subject to time limitations and other conditions imposed by the commission.

History. Acts 1993, No. 690, § 2; 2001, No. 1172, § 2; 2011, No. 865, §§ 7, 8. substituted “§ 17-42-103(9)” for “§ 17-42-103(12)” in (b), (e)(1), and (e)(2).

Amendments. The 2011 amendment

17-42-303. Education and experience requirements.

(a) The Arkansas Real Estate Commission shall establish education requirements for licensure, including the standards and procedures for approval of education programs, subject to the following conditions:

(1)(A) The most education hours required of an applicant for a broker's license shall not exceed one hundred twenty (120) hours within the thirty-six (36) months immediately preceding the date of application.

(B) Effective on May 1, 2014, an applicant for a broker's license shall complete at least forty-five (45) of the required education hours in a course developed by the commission; and

(2) The maximum number of hours required of an applicant for a salesperson's license shall not exceed ninety (90) hours, at least thirty (30) hours of which shall be in the basic principles of real estate.

(b)(1) The commission shall establish the experience requirement for licensure for an applicant for a broker's license subject to the condition of serving an active, bona fide apprenticeship by holding a valid real estate salesperson's license issued by the commission or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(2) However, the commission may waive the experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(c)(1) The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers.

(2) The commission shall not require more than thirty (30) classroom hours of post-licensure education hours.

History. Acts 1993, No. 690, § 10; 1995, No. 729, § 1; 2001, No. 748, § 1; 2007, No. 263, § 5; 2013, No. 281, § 1.

Amendments. The 2013 amendment substituted “education” for “educational”

twice in the introductory language of (a); redesignated (a)(1) as (a)(1)(A) and added (a)(1)(B); and substituted “most educational” for “maximum number of educational” in (a)(1)(A).

17-42-307. Expiration and renewal.

(a) Every license shall expire on a date established by the Arkansas Real Estate Commission.

(b)(1) A broker or salesperson shall complete annually:

- (A) Six (6) classroom hours of continuing education;
- (B) The distance education equivalent of continuing education; or
- (C) A course that the commission has determined to demonstrate mastery of an acceptable real estate subject.

(2) A licensee who satisfies subdivision (b)(1) of this section completes the continuing education requirements for the licensing year.

(3) If a licensee files for renewal of a license but fails to provide proof of continuing education, the licensee's license is inactive until proof is provided to the commission.

(c)(1) To renew or reactivate a license, a licensee shall complete:

- (A) Six (6) classroom hours of continuing education; or
- (B) The distance education equivalent of continuing education for each inactive year. The total continuing education shall not exceed thirty (30) hours under this subdivision (c)(1).

(2) An inactive license is not subject to the education requirements of this section.

(3) The commission may waive all or part of the requirements of subdivision (c)(1) of this section if a licensee is unable to complete the continuing education due to extenuating circumstances.

(d)(1) For each active licensee, the commission shall issue a new license for each ensuing renewal period in the absence of a reason or condition that may warrant the refusal of a license, upon receipt of the:

- (A) Written request for license renewal at least ninety (90) days before the expiration of the license upon forms provided by the commission; and
- (B) Renewal fee.

(2)(A) A broker or salesperson who does not wish to engage in the real estate business may renew a license on inactive status in the absence of a reason or condition that may warrant the refusal of a license upon receipt of the:

- (1) Written request of the applicant at least ninety (90) days before the expiration of the license upon forms provided by the commission; and
- (2) Renewal fee.

(B) The commission may limit the number of renewal periods in which a license may be renewed on inactive status.

(C) The renewal fee for inactive status is the same as for renewal of an active license.

(3) An application for renewal filed after the date established by the commission to renew a license is treated as an application to renew an expired license.

(e) If a person to whom a valid license has been issued permits the license to expire for a period not in excess of that established by the

commission, the commission shall issue to the person a current license without requiring the person to submit to an examination if the person furnishes the information required by the commission, including proof of completion of appropriate continuing education requirements, and pays the fee required by the commission.

(f)(1) New salesperson and broker licensees shall complete post-licensure education under § 17-42-303(c).

(2) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the commission shall place the license on inactive status until the commission receives documentation that the licensee has completed the post-licensure education requirements.

History. Acts 1993, No. 690, § 13; 2001, No. 748, § 2; 2007, No. 263, § 6; 2013, No. 281, § 2.

Amendments. The 2013 amendment deleted “both active and inactive” following “license” in (a); inserted (b) and (c) and redesignated the remaining subsections accordingly; substituted “before” for “prior to” throughout the section; in (d)(1)(A), substituted “for License renewal at least” for “no later than”, and “and” for “together with”; substituted “Renewal” for “with the

renewal” in (d)(1)(B) and (d)(2)(A)(2); in (d)(2)(A), inserted “may renew” and deleted “shall be renewed” following “license”; substituted “at least” for “no later than” in (d)(2)(A)(1); in (e), substituted “the information required by the commission” for “such information as the commission requires”, “required by” for “as” and deleted “requires” from the end; and substituted “under” for “in accordance with” in (f)(1).

17-42-312. Investigation of complaint — Citations — Penalties.

(a)(1) The Arkansas Real Estate Commission may, on its own motion, and shall, upon the verified complaint in writing of any person, provided that the complaint and any evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate sales person regardless of whether the transaction was for his or her own account or in his or her capacity as a broker or salesperson.

(2) If the complaint fails to state a prima facie case or if, after investigation, the Executive Director of the Arkansas Real Estate Commission determines that there is insufficient proof of a violation of this chapter, the executive director shall dismiss the complaint.

(3) If, however, the executive director determines that there is sufficient proof of a violation of this chapter, the person shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) If a person violates this chapter, the commission may impose any one (1) or more of the following sanctions or requirements:

- (A) Suspension, revocation, or denial of his or her license or the renewal thereof;
- (B) A penalty of not more than one thousand dollars (\$1,000) for each violation;
- (C) Completion of appropriate educational programs or courses;

- (D) Successful completion of an appropriate licensing examination;
- (E) Conditions or restrictions upon the person's license or practice; or
- (F) Payment of restitution, damages, or other penalties appropriate to the circumstances of the case that would:
 - (i) Achieve the desired disciplinary purpose;
 - (ii) Compensate or reimburse an injured party or the commission; or
 - (iii) Promote the regulation of the real estate profession.

(b) The commission is authorized to file suit in Pulaski County Circuit Court or the circuit court of the county where the defendant resides or does business to collect a penalty assessed under this chapter if the penalty is not paid as ordered by the commission or the executive director.

(c) The commission may suspend the imposition of any sanctions imposed upon appropriate terms and conditions.

(d)(1) In lieu of the procedure contained in subdivisions (a)(1)-(3) of this section, the executive director may issue a citation imposing:

- (A) A penalty of not more than one hundred dollars (\$100) to a broker or salesperson who:
 - (i) Fails to complete annual education requirements; or
 - (ii) Fails to complete post-licensure education requirements by the established deadline; or
- (B) A penalty of not more than two hundred fifty dollars (\$250) to a broker, salesperson, or the supervising broker of a broker or salesperson if a broker or salesperson performs activities that require an active real estate license while his or her license is expired.

(2) The citation shall include:

- (A) The name, title, mailing address on file with the commission, and real estate license number of the licensee;
- (B) The specific violation and related statute, regulation, or rule;
- (C) The time and date the citation is issued;
- (D) The amount of the penalty;
- (E) The deadline of thirty (30) days from issuance of the citation and procedure to either:
 - (i) Pay the citation without further penalty; or
 - (ii) Dispute the citation;
- (F) A statement that the amount of the penalty and the findings of the executive director as to the facts are considered accurate, conclusive, finally adjudicated, and nonappealable if a verified written complaint contesting the citation is not filed within thirty (30) days of the citation's issuance; and
- (G) A signature line for the licensee to accept the penalty without filing a written dispute.

(3) A licensee who is issued a citation under this subsection shall within thirty (30) days of the issuance of the citation:

- (A) Accept the conditions of the citation by signing and returning the citation to the commission accompanied by the penalty payment; or
- (B) File a verified written complaint under this section contesting the citation.

(4) The commission may treat the failure to respond within thirty (30) days of the issuance of the citation as a violation of this chapter punishable by the penalties provided in subsection (a) of this section.

(5)(A) If a licensee does not dispute the citation or request a hearing under § 17-42-314, the findings contained in the citation are deemed accurate, conclusive, finally adjudicated, and nonappealable.

(B) If a licensee disputes the citation by timely filing a verified written complaint with the commission, the licensee shall be provided a hearing before the commission under § 17-42-314.

(6) The commission may modify or vacate a citation issued under this subsection with or without a hearing.

History. Acts 1993, No. 690, § 17; 2013, No. 112, § 1.

Amendments. The 2013 amendment inserted “Citations” in the section heading; substituted “person” for “licensee” in (a)(3); in the introductory language of (a)(4), substituted “a person violates” for “the licensee is found to have violated” and inserted “or requirements”; substi-

tuted “of not more than” for “not to exceed” in (a)(4)(B); rewrote (a)(4)(F); in (b), deleted “either the” preceding “Pulaski”, substituted “under” for “pursuant to”, “as ordered” for “within the time prescribed” and added “or the executive director”; deleted “When deemed appropriate” preceding “the commission” in (c); and added (d).

17-42-316. Agency relationship and duties generally.

- (a) The common law of agency under Arkansas as supplemented by this section applies to the relationship between a licensee and the licensee’s client.
- (b)(1) In accepting employment by a client, a licensee pledges a primary duty of absolute fidelity to protect and promote the interests of the client or clients.
- (2) The licensee’s duty includes without limitation the obligation to:
 - (A) Use reasonable efforts to further the interest of the client;
 - (B) Exercise reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;
 - (C) Perform the terms of the written agency agreement;
 - (D) Follow lawful instructions of the client unless doing so would expose the licensee to liability from another party to a contract, lease, or rental agreement;
 - (E) Perform all duties specified in this section in a manner that demonstrates loyalty to the interests of the client;
 - (F) Comply with all requirements of this section and other applicable statutes, rules, and regulations;
 - (G) Disclose to the client material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;

- (H) Advise the client to obtain expert advice concerning material matters when necessary or appropriate;
- (I) Account in a timely manner for all moneys and property received in which the client has or may have an interest;
- (J) Keep confidential all confidential information; and
- (K) Refrain from disclosing confidential information to a licensee who is not an agent of the client.

(c) The duties required of a licensee under this section may not be waived by a client.

History. Acts 2011, No. 877, § 1.

17-42-317. Representing seller or lessor in an agency relationship.

- (a) When representing a seller or lessor in an agency relationship, a licensee shall:
 - (1)(A) Use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor.
 - (B) Unless requested by the seller or lessor, the licensee is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;
 - (2) Accept delivery of and present an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease;
 - (3) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:
 - (A) Answer the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract; and
 - (B) Provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge; and
 - (4) Assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.
- (b) A licensee does not breach a duty or an obligation to a seller or lessor with whom the licensee has an agency relationship by showing alternative properties to a prospective buyer or by acting as an agent or subagent for other sellers or lessors.
- (c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

History. Acts 2011, No. 877, § 1.

17-42-318. Representing buyer or lessee in an agency relationship.

- (a) When representing a buyer or lessee in an agency relationship, a licensee shall:
 - (1)(A) Use reasonable efforts to locate a property at a price and with purchase or lease terms acceptable to the buyer or lessee.

(B) Unless requested by the client, the licensee is not obligated to seek additional purchase or lease possibilities if the buyer or lessee has contracted to purchase or lease or has extended a letter of intent to lease suitable property;

(2) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:

(A) Answer the buyer's or lessee's questions regarding the steps the buyer must take to fulfill the terms of any contract; and

(B) Provide information to the buyer or lessee regarding offers or counteroffers;

(3) Assist the buyer or lessee in developing, communicating, and presenting offers or counteroffers; and

(4) In a timely manner:

(A) Present an offer to purchase or lease to the seller or lessor or their agent, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease; and

(B) Accept delivery of and present any counteroffers to the buyer or lessee.

(b) If a dual or multiple agency relationship is disclosed under § 17-42-108, a licensee does not breach a duty or an obligation to the buyer or lessee by:

(1) Showing property to other buyers or lessees; or

(2) Acting as an agent or subagent for other buyers or lessees or as an agent or subagent for sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

History. Acts 2011, No. 877, § 1.

17-42-319. Waiver of agency duties.

(a) A licensee shall perform the duties required under § 17-42-317 or § 17-42-318 unless the client agrees to waive these duties and signs a waiver of duties statement that contains:

(1) A list of the fiduciary duties required of all licensees under § 17-42-316;

(2) A list of the duties contained in § 17-42-317 or § 17-42-318 set forth in a manner that allows for the parties to indicate each duty that is being waived; and

(3) The following language in at least 10-point boldface type:

“Agreement to Waive

By signing below, I agree that the real estate licensee who represents me will not perform the duties that are initialed above. I also understand that in a proposed real estate transaction, no other real estate licensee will perform the waived duties, and I realize that I may need to hire other professionals such as an attorney.

Signature of Client

Date

Signature of Licensee

Date"

(b) If a licensee enters into an agency relationship containing the waivers outlined in this section, all reasonable efforts must be taken to inform other licensees that:

(1) Any moneys of others, including without limitation earnest money, advance fees, or security deposits are not to be transmitted or kept by the licensee, notwithstanding other applicable statutes and rules; and

(2) A licensee for a buyer or lessee remains authorized to present offers to buy, lease, or rent real property directly to the licensee's principal notwithstanding a:

- (A) Waiver under subsection (a) of this section; or
- (B) Conflicting statute or rule.

History. Acts 2011, No. 877, § 1.

SUBCHAPTER 4 — APPLICABILITY — REAL ESTATE RECOVERY FUND — DISCIPLINARY ACTIONS

SECTION.

17-42-410. [Repealed.]

17-42-410. [Repealed.]

Publisher's Notes. This section, concerning Applicability of Acts 1997, No. 781, was repealed by Acts 2013, No. 1147,

§ 2. The section was derived from Acts 1997, No. 781, § 2.

SUBCHAPTER 5 — RENEWAL OF LICENSES

SECTION.

17-42-501. Real estate education program.
17-42-502. Definitions.
17-42-503. Exemptions.
17-42-504. Requirements — Mandatory real estate education.
17-42-505. Civil penalties — Jurisdiction.
17-42-506. Powers and duties.
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17-42-508. Subpoenas and subpoenas duces tecum.
17-42-509. Issuance or denial of license.

SECTION.

17-42-510. Education fees.
17-42-511. License application procedure.
17-42-512. Term of license.
17-42-513. Approval of courses and course content.
17-42-514. Curricula.
17-42-515. Violations.
17-42-516. Investigation of complaint — Penalties.
17-42-517. Dismissal of complaint — Appeal.
17-42-518. Hearings.

A.C.R.C. Notes. Acts 2013, No. 281, § 4, provided: "Effective January 1, 2014, the Arkansas Real Estate Commission

has the authority to issue and renew real estate education licenses under this subchapter. It is the intent of this section to

cure any gap in applicable law resulting from the transition from licensing under prior law with the State Board of Private Career Education to this subchapter."

17-42-501. Real estate education program.

The Arkansas Real Estate Commission shall establish an education program for real estate licensees to ensure that education is available and accessible to an applicant or a licensee. The education program is intended to fulfill the education requirements for a real estate license and to provide real estate courses intended to fulfill the education requirements for a real estate license.

History. Acts 1993, No. 690, § 23; **Amendments.** The 2013 amendment 1995, No. 1285, § 2; 1999, No. 471, § 1; rewrote the section. 2007, No. 263, § 11; 2013, No. 281, § 3.

17-42-502. Definitions.

As used in this subchapter:

(1) "Accredited college or university" means a state-supported institution of higher education or a nonpublic, not-for-profit college or university currently incorporated and recognized by the Arkansas Higher Education Coordinating Board as an Arkansas independent institution of higher education operating under the applicable laws of this state;

(2) "Administrator" means a person employed by a real estate trade or professional association licensed by the Arkansas Real Estate Commission;

(3) "Approved course" means a course of instruction approved by the commission that satisfies the education requirements for prelicense education, postlicense education, or continuing education for a real estate license;

(4) "Associate instructor" means a person who is licensed by the commission to teach real estate courses while under the supervision of an administrator or principal instructor that satisfy the education requirements for a real estate license;

(5) "Association license" means a license granted by the commission to a real estate trade or professional association offering approved education that satisfies education requirements for a real estate license;

(6) "Branch school" means a school affiliated with a main school to which the commission has issued a school license;

(7) "Classroom course" means a real estate course that:

(A) Is presented at a facility in person by an instructor and attended in person by the student; or

(B) Connects by contemporaneous, two-way audio and visual technology an instructor and a student who are separated by distance;

(8) "Distance education" means a real estate course that is delivered through an electronic medium that allows the instructor and student to be separated by both distance and time;

(9) "Guest speaker" means a person who is not licensed by the commission who teaches a part of a course approved by the commission;

(10) "Instructional site" means a physical place where education courses approved by the commission are conducted apart from the main school or branch school;

(11) "Main school" means an institution or organization that is the primary school location to which the commission has issued a school license;

(12) "Nonqualified offering" means a course in real estate education that has not been approved by the commission but is offered to persons intending to apply for a real estate license;

(13) "Postlicense education" means real estate education required to be successfully completed within a time frame established by the commission after a real estate license is issued;

(14) "Prelicense education" means real estate education required to be successfully completed by an applicant before sitting for the examination for a broker or salesperson license;

(15)(A) "Principal instructor" means a person who is licensed by the commission for each licensed school that is responsible for the education courses at a main school and the acts necessary to comply with this subchapter and rules enacted by the commission.

(B) A principal instructor may:

(i) Contract with or employ an associate instructor or guest speaker;

(ii) Supervise an associate instructor or guest speaker;

(iii) Submit an education course to the commission for approval;

(iv) Advertise as being engaged in the business of offering real estate education courses; and

(v) Charge tuition and fees for real estate education courses;

(16) "Satisfactory completion" means, as determined by a principal instructor, successful completion of a required course that is approved by the commission;

(17) "School license" means a license granted by the commission to a proprietary education institution offering education courses approved by the commission that fulfill mandatory education requirements for attaining or maintaining a real estate license; and

(18) "Student" means an applicant or licensee who attends real estate education courses approved by the commission.

History. Acts 1993, No. 690, § 23; **Amendments.** The 2013 amendment 1999, No. 471, § 2; 2013, No. 281, § 3. rewrote the section.

17-42-503. Exemptions.

- (a) The licensing requirements of this subchapter do not apply to:
 - (1) The National Association of Realtors, the National Association of Real Estate Brokers, or other associated entities if each association identifies an administrator;
 - (2) An accredited college or university; or
 - (3) An instructor associated with an entity listed in subdivision (a)(1) or (2) of this section if the course is developed by or for those specific entities.
- (b) The requirement for course approval by the Arkansas Real Estate Commission under this subchapter does not apply to:
 - (1) A classroom course in a real estate-related subject identified by the commission as an approved topic if it is offered by the National Association of Realtors, the National Association of Real Estate Brokers, or other associated entities;
 - (2) A course of at least three (3) semester hours or equivalent in a real estate subject that is approved by the commission and offered by an accredited college or university;
 - (3) A course in a real estate-related subject offered by the commission;
 - (4) A course or a conference in a real estate-related subject approved by the commission and offered annually on a limited basis in Arkansas; or
 - (5) A course that is not used to fulfill the education requirements of this subchapter for attaining a real estate license.

History. Acts 1993, No. 690, § 23; 2007, No. 263, § 12; 2013, No. 281, § 3.

Amendments. The 2013 amendment rewrote the section heading; substituted “The licensing requirements of this subchapter do not apply to” for “The following do not qualify as continuing education” in (a); rewrote (a)(1) and (b); substituted “An

accredited college or university; or” for “Sales promotions or other ... general business of the licensee; and” in (a)(2); substituted “An instructor associated with ... for those specific entities” for “Time devoted to breakfasts, luncheons, and dinners” in (a)(3).

17-42-504. Requirements — Mandatory real estate education.

- (a) A person shall not practice as a provider of real estate education for real estate licensure unless the person holds a real estate license under this subchapter.
- (b) A person or school shall not represent that an offered real estate course satisfies the education requirements for real estate licensure unless the course is approved by the Arkansas Real Estate Commission.
 - (c)(1) It is a violation of this subchapter to fail to obtain:
 - (A) A license to practice as a provider of real estate education for real estate licensure; or
 - (B) Approval for a real estate education course by the commission.
 - (2) A real estate education course offered in violation of this subchapter is a nonqualified offering.

History. Acts 1993, No. 690, § 23; **Amendments.** The 2013 amendment 1995, No. 1285, § 3; 2007, No. 263, § 13; rewrote the section. 2013, No. 281, § 3.

17-42-505. Civil penalties — Jurisdiction.

(a) If after notice and a hearing under this subchapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has offered a nonqualified offering, the commission may impose a civil penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to provide or provides a course offering without the appropriate license or course approval from the commission is *prima facie* evidence that the person is offering a nonqualified offering.

(c) In addition to civil penalties imposed under this section, the commission may require a person who offered a nonqualified offering to reimburse compensation, fees, or other remuneration collected for the nonqualified offering.

History. Acts 1993, No. 690, § 23; rewrote the section heading, (a) and (b); 1995, No. 1285, § 4; 2013, No. 281, § 3. and added (c).

Amendments. The 2013 amendment

17-42-506. Powers and duties.

(a) The Arkansas Real Estate Commission may adopt rules as necessary to implement this subchapter.

(b) The commission shall license, approve, and regulate schools, associations, principal instructors, and associate instructors offering commission-approved prelicense, postlicense, and continuing education courses offered to satisfy education requirements for real estate licensure.

(c) The commission shall establish the licensing or education requirements for:

(1) A school or association that applies for a license to offer real estate courses that satisfy the education requirements for real estate licensure;

(2) Principal and associate instructors of courses approved by the commission;

(3) Courses that satisfy the education requirements for applicants for real estate licensure and licensees; and

(4) Guest speakers of courses approved by the commission.

(d) The commission shall:

(1) Establish procedural guidelines for licensed schools and their locations and those providing real estate education designed for students to meet the education requirements for a real estate license;

(2) Charge fees and pay the necessary expenses to develop, approve, sponsor, contract for, or conduct real estate courses and seminars for real estate licensees or instructors of real estate education;

(3) Maintain in electronic format a list of the names of real estate schools, associations, administrators, instructors, and courses approved under this subchapter;

(4) Publish in electronic format the names of the persons, associations, or schools that have been sanctioned by formal hearing or consent order under this subchapter;

(5) Periodically monitor courses offered or taught by the licensed schools and instructors; and

(6) Establish course requirements with respect to:

- (A) Accessibility;
- (B) Attendance;
- (C) Satisfactory completion; and
- (D) Curricula.

History. Acts 1993, No. 690, § 23; 2013, No. 281, § 3.

Amendments. The 2013 amendment rewrote the section heading and (b); substituted "The Arkansas Real Estate Com-

mission may adopt rules as necessary to implement this subchapter" for "Credit shall be earned on the basis of attendance" in (a); and added (c) and (d).

17-42-507. Disposition of funds.

Except as otherwise provided in this subchapter, the fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission under this subchapter are to be deposited into the Arkansas Real Estate Commission Fund and spent under § 17-42-204.

History. Acts 1993, No. 690, § 23; 2013, No. 281, § 3.

Amendments. The 2013 amendment rewrote the section.

17-42-508. Subpoenas and subpoenas duces tecum.

The Arkansas Real Estate Commission may issue subpoenas and subpoenas duces tecum with both its investigations and hearings of persons, entities, and courses under § 17-42-205.

History. Acts 2013, No. 281, § 3.

17-42-509. Issuance or denial of license.

(a) The Arkansas Real Estate Commission shall issue a license to an applicant instructor of real estate education who:

- (1) Is twenty-one (21) years of age or older;
- (2) Has successfully completed the real estate education requirements under this subchapter;
- (3) Has sufficient experience as determined by the commission;
- (4) Has no record of unprofessional conduct; and
- (5) Shows evidence of a reputation of honesty, trustworthiness, and integrity sufficient to safeguard the interest of the public.

(b) The commission shall determine what constitutes proof of meeting the requirements of subsection (a) of this section.

(c) A person or entity shall not be issued a license under this subchapter if:

(1) The person or entity has had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons;

(2) The person has been refused a renewal of a license issued by this state or any other jurisdiction;

(3) The person or entity has pleaded guilty or nolo contendere to or been found guilty of a felony or misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of competent jurisdiction; or

(4) The person or entity fails to pay the appropriate fees.

(d)(1) Subsection (c) of this section may be waived by the commission on request of an affected applicant for licensure.

(2) Circumstances for which a waiver may be granted include:

(A) The applicant's age at the time the action occurred;

(B) The circumstances surrounding the action;

(C) The length of time since the action;

(D) Work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

History. Acts 2013, No. 281, § 3.

17-42-510. Education fees.

(a) The Arkansas Real Estate Commission may charge and collect the following fees annually:

(1) An original license fee for each main school not to exceed five hundred dollars (\$500);

(2) An original license fee for each branch of a main school not to exceed three hundred dollars (\$300);

(3) A renewal fee for each main school not to exceed four hundred dollars (\$400);

(4) A renewal fee for each branch of a main school not to exceed two hundred dollars (\$200);

(5) An administrator license application fee not to exceed two hundred dollars (\$200);

(6) An administrator renewal fee not to exceed one hundred dollars (\$100);

(7) A principal instructor license application fee not to exceed two hundred fifty dollars (\$250);

(8) A principal instructor license renewal fee not to exceed one hundred fifty dollars (\$150);

(9) An associate instructor license application fee not to exceed two hundred dollars (\$200);

(10) An associate instructor license renewal fee not to exceed one hundred dollars (\$100);

- (11) A license amendment fee not to exceed one hundred dollars (\$100);
- (12) A license reissuance fee not to exceed fifty dollars (\$50.00);
- (13) A course approval fee not to exceed one hundred dollars (\$100) for each approved course;
- (14) A course approval renewal fee not to exceed fifty dollars (\$50.00) for each approved course;
- (15) A late renewal fee for a license or course approval not to exceed two hundred fifty dollars (\$250); and
- (16) An appeal of the dismissal of a complaint by the Executive Director of the Arkansas Real Estate Commission, a filing fee not to exceed one hundred dollars (\$100).

(b) Except for the fees for course approval and course approval renewal, state agencies and full-time accredited college or university instructors are exempt from the fees in this subchapter.

History. Acts 2013, No. 281, § 3.

17-42-511. License application procedure.

- (a) Applications for licensure are submitted on forms provided by the Arkansas Real Estate Commission.
- (b) An applicant for licensure shall pay the fees required under this subchapter.
- (c) An applicant for licensure or course approval shall furnish contact information on forms provided by the commission.
- (d)(1) An applicant, administrator, or licensee is required to maintain current contact information with the commission.
- (2) Contact information includes physical and mailing addresses, home and business telephone numbers, and home and business email.

History. Acts 2013, No. 281, § 3.

17-42-512. Term of license.

- (a) A license is issued for a term of one (1) year.
- (b)(1) The Arkansas Real Estate Commission shall issue approval for renewal of a license in the absence of a reason or condition that may warrant the refusal of the renewal on receipt of a renewal request thirty (30) days before the expiration of the license.
- (2) A late fee applies to applications received after the renewal deadline.
- (c)(1) A licensee who has not applied for renewal or whose renewal application did not meet the requirements for renewal shall be notified by the commission.
- (2) An application for renewal of a license that has been submitted but not renewed by the date of expiration is considered a new applicant.

History. Acts 2013, No. 281, § 3.

17-42-513. Approval of courses and course content.

- (a) Except for courses exempted in § 17-42-503(b), a real estate course that is intended to satisfy the education requirements for a real estate license shall first be approved by the Arkansas Real Estate Commission.
- (b) An application for course approval shall be submitted on the form required by the commission with the required fees.
- (c) Requirements for course approval are determined by the commission.

History. Acts 2013, No. 281, § 3.

17-42-514. Curricula.

- (a) The Arkansas Real Estate Commission may:
 - (1) Identify subject matter topics for continuing education courses;
 - (2) Identify a specific topic of not more than three (3) hours to be included in the education requirement of six (6) hours of continuing education annually;
 - (3) Develop and require a specific curriculum for continuing education courses for licensed brokers or their designees; and
 - (4) Identify subject matter topics for which licensed schools and instructors may develop courses that fulfill the annual continuing education requirements.
- (b) The commission may develop the curricula for prelicense and postlicense education.

History. Acts 2013, No. 281, § 3.

17-42-515. Violations.

An applicant for a real estate educator license or a licensee is subject to disciplinary action under this subchapter if the applicant for a real estate educator license or a licensee pleads guilty or nolo contendere to or is found guilty of any of the following:

- (1) Obtaining a real estate educator license or real estate education course approval by fraud, misrepresentation, or concealment;
- (2) Violating this subchapter, the rules adopted by the Arkansas Real Estate Commission, or an order issued by the commission;
- (3) Committing an act, felony, or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of the sentence has been deferred or suspended;
- (4) Engaging or allowing unlawful discriminatory practices;
- (5) Violating the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., regarding access to and delivery of real estate education courses;
- (6) Issuing or reporting a false certificate of completion for a real estate education course;

- (7) Teaching a course in a way that instructs licensees to engage in unlawful or noncompliant activities;
- (8) Failing to monitor attendance of students to ensure satisfactory completion of real estate education courses approved by the commission;
- (9) Utilizing an instructor or guest speaker who does not meet the requirements of this subchapter;
- (10) Making a substantial misrepresentation of a material fact to the commission;
- (11) Advertising in a false, misleading, or deceptive way;
- (12) Being unworthy or incompetent to act or operate as a real estate education school or association or a real estate educator; or
- (13) Other conduct that constitutes improper, fraudulent, or dishonest dealing.

History. Acts 2013, No. 281, § 3.

17-42-516. Investigation of complaint — Penalties.

(a)(1) The Arkansas Real Estate Commission may on its own motion and shall on the complaint in writing of a person, if the complaint and evidence presented make a *prima facie* case, investigate the action of a person or entity engaged in the business or acting in the capacity of a real estate school, association, or instructor licensed by the commission.

(2) A student's inability to pass the real estate exam does not in and of itself make a *prima facie* case.

(3) If the complaint fails to state a *prima facie* case or if the Executive Director of the Arkansas Real Estate Commission determines there is insufficient proof of a violation of this subchapter, the executive director shall dismiss the complaint.

(4) If the executive director determines that there is sufficient proof of a violation of this subchapter, the person or entity responsible shall be notified of the charges and ordered to appear for a hearing.

(5) If the person or entity is found to have violated this subchapter, the commission may impose one (1) or more of the following sanctions:

(A) Suspend, revoke, or deny the license or course approval or its renewal;

(B) Impose a penalty not to exceed one thousand dollars (\$1,000) for each violation;

(C) Require completion of appropriate education programs or courses;

(D) Place conditions or restrictions on the license or course approval held by the person or entity in violation or order the licensed entity or person to reimburse moneys collected from the complainant; or

(E) Impose other requirements or penalties as may be appropriate to the circumstances of the case that achieve the desired disciplinary purposes without impairing the public welfare and morals.

(b) The commission shall file suit in the circuit court of the county in which the defendant resides or does business to collect a penalty assessed under this subchapter if the penalty is not paid within the time prescribed by the commission.

(c) Under certain circumstances, the commission may suspend the imposition of any sanction.

(d) The license of an instructor, school, or association with outstanding disciplinary fines or student reimbursements is suspended until the moneys owed the commission or amounts ordered to be paid by the commission are paid.

History. Acts 2013, No. 281, § 3.

17-42-517. Dismissal of complaint — Appeal.

(a) A person whose complaint against a licensed school, administrator, or instructor is dismissed by the Executive Director of the Arkansas Real Estate Commission without a hearing may appeal the dismissal to the Arkansas Real Estate Commission subject to the following:

(1) The request for appeal is in writing and received by the commission within sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal is accompanied by a filing fee as the commission may require under this subchapter; and

(3)(A)(i) The appellant shall pay the cost of preparing the record for the commission's review.

(ii) The appellant shall pay the costs within thirty (30) days after notification of the amount or the appeal is dismissed.

(B) If the commission's review results in a hearing being ordered, the filing fee and the cost of preparing the record are refunded to the appellant.

(C) A person who is indigent and cannot pay the filing fee or the cost of the record, or both, may file a pauper's oath in a form provided by the commission. If the commission determines that the appellant is indeed indigent, the filing fee or cost of the record may be waived.

(b)(1) An appeal perfected under subsection (a) of this section is presented to and decided by the commission on the written record.

(2) The decision by the commission may be to affirm the executive director's dismissal, to order additional investigation, or to order a hearing.

History. Acts 2013, No. 281, § 3.

17-42-518. Hearings.

(a) Proceedings under this subchapter are conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in the case of a person or entity obtaining a license or course approval by false or fraudulent representation, the Arkansas Real Estate Commission shall not investigate the actions of or conduct

a disciplinary hearing regarding a licensed school, administrator, or instructor unless the complaint is filed or the investigation begins within three (3) years from the date of the actions.

History. Acts 2013, No. 281, § 3.

CHAPTER 43

SANITARIANS

SUBCHAPTER.

2. ARKANSAS STATE BOARD OF SANITARIANS.

3. CERTIFICATE OF REGISTRATION.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF SANITARIANS

SECTION.

17-43-207. Transfer of the Arkansas

State Board of Sanitarians.

Effective Dates. Acts 2013, No. 481, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act transfers the Arkansas State Board of Sanitarians to the Arkansas Department of Health; that to effectively administer this act the transition

should occur at the beginning of the next fiscal year; and that the effectiveness of this act on July 1, 2013, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

17-43-201. Creation — Members.

A.C.R.C. Notes. Acts 2013, No. 481, § 1, provided: "Effective July 1, 2013, the Arkansas State Board of Sanitarians established by Arkansas Code § 17-43-201

is transferred as a Type 1 transfer under Arkansas Code § 25-2-104 to the Arkansas Department of Health."

17-43-207. Transfer of the Arkansas State Board of Sanitarians.

(a)(1) Effective July 1, 2013, the Arkansas State Board of Sanitarians is transferred to the Department of Health and shall be administered by the Director of the Department of Health.

(2) All authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations, or other funds of the Arkansas State Board of Sanitarians are transferred to the department.

(b) In order to protect the board, to allow for continuation of necessary procedures, and to provide for a smooth transition to the department, the director may not realign the functions and records of the board before July 1, 2014.

History. Acts 2013, No. 481, § 2.

A.C.R.C. Notes. Acts 2013, No. 481, § 1, provided: "Effective July 1, 2013, the Arkansas State Board of Sanitarians es-

tablished by Arkansas Code § 17-43-201 is transferred as a Type 1 transfer under Arkansas Code § 25-2-104 to the Arkansas Department of Health."

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.

17-43-309. Grounds for suspension, revocation, or refusal to renew

- Duty of board to hire independent investigator
- Scope of investigation.

Effective Dates. Acts 2011, No. 295, § 6: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2011 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2011 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2011."

17-43-309. Grounds for suspension, revocation, or refusal to renew — Duty of board to hire independent investigator — Scope of investigation.

(a) The Arkansas State Board of Sanitarians may suspend, revoke, or refuse to renew a certificate of registration upon proof that the applicant:

- (1) Is not of good character; or
- (2) Is guilty of fraud, deceit, gross negligence, incompetency, or misconduct in relation to his or her duties as a sanitarian.

(b)(1) When necessary to determine whether grounds exist under this section to suspend, revoke, or refuse to renew a certificate of registration, the board shall hire and fix the compensation of an independent investigator to perform the investigation.

(2) The scope of the investigation shall not exceed matters that are reasonably necessary to determine whether grounds exist under this section to suspend, revoke, or refuse to renew a certificate of registration.

History. Acts 1957, No. 281, § 17; A.S.A. 1947, § 71-1617; Acts 2011, No. 295, § 2.

Amendments. The 2011 amendment

added "Duty of board to hire independent investigator — Scope of investigation" in the section heading; and added the (a) designation and (b).

CHAPTER 44

SCRAP METAL DEALERS

SECTION.

17-44-102. Records required.

17-44-103. [Repealed.]

17-44-106. Penalties.

SECTION.

17-44-107. Lifetime ban.

17-44-108. License to sell required.

17-44-102. Records required.

(a) As used in this section, “reasonable, written documentation” means a written document that includes the following information provided by the seller of the scrap metal to the scrap metal recycler:

(1) The name of the entity or individual from whom the seller acquired the scrap metal;

(2) The date the seller acquired the scrap metal;

(3) The physical address from where the seller acquired the scrap metal;

(4) An affirmation or certification from the seller in the written document that he or she is the owner of the scrap metal or is the employer, agent, licensed contractor, licensed HVACR, plumber, electrician, or other person authorized to sell the scrap metal on behalf of the owner; and

(5) An affirmation or certification from the seller in the written document that he or she has not pleaded guilty or nolo contendere to or been found guilty of theft, burglary, or vandalism when the offense involved scrap metal.

(b) A seller shall not sell and a scrap metal recycler shall not purchase scrap metal unless reasonable, written documentation is provided that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner.

(c)(1) Each scrap metal recycler doing business in the State of Arkansas shall maintain an accurate and legible record of each scrap metal purchase transaction.

(2) Individual records shall not be required for a series of scrap metal purchase transactions made under a contract.

(3) The data required under subdivision (d)(1) of this section may be maintained for repeat sellers in a relational database allowing the scrap metal recycler to record the information one (1) time and relate future purchase records to that information.

(4) A municipality or county may require by ordinance electronic or digital records and reporting methods.

(d) The record of each scrap metal purchase transaction shall contain the following information taken at the time of sale and kept on record:

(1) The name, address, gender, birth date, and identifying number from the seller’s driver’s license, military identification card, passport, or other form of government-issued photo identification;

- (2) A photocopy of the government-issued photo identification provided under subdivision (d)(1) of this section;
- (3) The date of the scrap metal purchase transaction;
- (4) The digital thumbprints of the seller;
- (5)(A) A general description of the predominant types of scrap metal purchased.

(B) The general description shall be made in accordance with the custom of the trade;

(6) A general description of the configuration of the scrap metal and whether the material is insulated;

(7) The weight, quantity, or volume, recorded in accordance with the custom of the trade, of the scrap metal purchased;

(8) The consideration paid;

(9) The license plate number of the vehicle used in transporting the materials to the scrap metal recycler's place of business; and

(10)(A) A clearly identifiable date-and-time-stamped digital photograph of the:

(i) Seller; and

(ii) Scrap metal in the form in which it was purchased.

(B) The name of the person taking the photographs under this subdivision (10) shall be recorded and provided with the photographs.

(e) The photocopy required under subdivision (d)(2) of this section, the digital thumbprints required under subdivision (d)(4) of this section, and the digital photographs taken required under subdivision (d)(10)(A) of this section shall be reasonably clear.

(f)(1)(A) For records required under subsections (a) and (d) of this section, a scrap metal recycler shall file a daily electronic record of scrap metal purchases made for that day.

(B) The report shall be made daily by entering the information into an automated database which may be accessed by law enforcement statewide.

(2)(A) The operator of the electronic database under this section shall send a report that shall include a list of all scrap metal recyclers in the county that have accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section:

(i) To the county sheriff every seven (7) days; and

(ii) To any law enforcement agency that requests periodic copies of the report more frequently than every seven (7) days.

(B)(i) A scrap metal recycler who fails to file a daily electronic record of scrap metal purchases as required by this section shall be subject to the civil penalty provided for under § 17-44-106(a) for the first offense.

(ii) A second violation of the daily reporting requirement of this section is a Class A misdemeanor.

(iii) A third or subsequent violation is a Class D felony.

(C) The report by the operator of the electronic database shall include a list of all scrap metal recyclers in the county that have

accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section.

(g) The records required under this section shall be:

(1) Kept for a period of one (1) year;

(2) Made available to any law enforcement office of the State of Arkansas and any Arkansas municipality or county; and

(3) Available for use in any legal proceeding.

(h) This section does not apply to transactions:

(1) In which a scrap metal processor purchases, transfers, or otherwise conveys scrap metal to another scrap metal processor if the purchaser or transferee obtained a bill of sale or similar document at the time of transfer;

(2) Involving only beverage or food containers; or

(3) Involving only ferrous metals.

History. Acts 1969, No. 148, §§ 1-3; A.S.A. 1947, §§ 71-1501.1 — 71-1501.3; Acts 2005, No. 1994, § 399; 2007, No. 749, § 2; 2009, No. 390, § 2; 2011, No. 1193, § 2; 2013, No. 1354, § 7.

Amendments. The 2011 amendment inserted present (a) and (b), deleted former (e), and redesignated the remaining subsections accordingly; substituted “subdivision (d)(1)” for “subdivision (b)(1)” in present (c)(3) and (d)(2); inserted “clearly

identifiable” in (d)(10)(A); in (e), substituted “subdivision (d)(2)” for “subdivision (b)(2),” “subdivision (d)(4)” for “subdivision (b)(4),” and “subdivision (d)(10)(A)” for “subdivision (b)(10)(A); and substituted “subsections (a) and (d)” for “subsection (b)” in (f)(1).

The 2013 amendment redesignated (f)(1) as (f)(1)(A) and former (f)(2) as (f)(1)(B) and added present (f)(2).

17-44-103. [Repealed.]

Publisher's Notes. This section, concerning restrictions on the purchase of certain items, was repealed by Acts 2011, No. 1193, § 3. The section was derived from Acts 1975, No. 583, §§ 1-3; A.S.A.

1947, §§ 71-1501.4 — 71-1501.6; Acts 1991, No. 669, § 1; 2005, No. 1994, § 228; 2007, No. 749, § 3; 2009, No. 390, § 3; 2011, No. 348, § 1.

17-44-106. Penalties.

(a) A person who violates this chapter may be assessed a civil penalty of no more than one thousand dollars (\$1,000) per violation.

(b) Any person who knowingly gives false information with respect to the matters required to be maintained in the records provided for in this chapter is guilty of a Class A misdemeanor.

History. Acts 2007, No. 749, § 6; 2009, No. 390, § 4; 2011, No. 1193, § 4; 2013, No. 1354, § 8.

Amendments. The 2011 amendment rewrote (a).

The 2013 amendment substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” in (a).

17-44-107. Lifetime ban.

(a) A person who is convicted of theft of scrap metal under § 5-36-123 is forever prohibited from selling scrap metal under this chapter.

(b) A person violating this section is subject to the civil penalties under § 17-44-106.

History. Acts 2013, No. 1354, § 9.

17-44-108. License to sell required.

(a)(1) A license is required for all scrap metal recyclers to be issued by the county sheriff.

(2)(A) A license under this section shall cost two hundred and fifty dollars (\$250) and may be renewed annually for twenty-five dollars (\$25.00).

(B) The fees described in subdivision (a)(2)(A) do not apply to a not-for-profit scrap metal dealer or not-for-profit scrap metal recycler.

(3) The license fee shall be payable to the county sheriff and shall be used for the county sheriff's general operating expenses.

(b) Before a license may be issued under this section, a person operating as a scrap metal recycler shall:

(1) Have a fixed physical location with a full complement of permanent utilities, if applicable, including without limitation:

- (A) Water;
- (B) Sewer;
- (C) Electricity; and
- (D) Gas;

(2) Show proof of a required national pollution discharge elimination system stormwater permit issued by the Arkansas Department of Environmental Quality; and

(3) Have the ability to comply with online reporting as required by this chapter.

(c) A license under this section may be suspended or revoked by a court having jurisdiction if the prosecuting attorney shows in a civil action that a scrap metal recycler has failed to comply with the requirements of this subchapter.

History. Acts 2013, No. 1354, § 9.

CHAPTER 48
SURVEYORS**SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-48-101. Definitions.

17-48-104. Powers of the board.

17-48-101. Definitions.

As used in this chapter:

(1)(A) "Firm" means a form of business entity that offers professional surveying services of its licensed personnel to the public.

(B) "Firm" does not include an individual licensee operating under his or her name;

(2)(A) "Land surveying" means a service comprising the:

(i) Determination of the location of land boundaries and land boundary corners; and

(ii) Preparation of:

(a) Plats showing the shape and areas of tracts of land and their subdivision into smaller tracts;

(b) Plats showing the location of streets, roads, and rights-of-way of tracts to give access to smaller tracts; and

(c) Official plats or maps of land thereof in this state.

(B) "Land surveying" does not include the measure of acreage of timber, cotton, rice, or other agricultural crops.

(C) A person practices or offers to practice land surveying if the person:

(i) Engages in land surveying for others; or

(ii) By verbal claim, sign, letterhead, card, telephone listing, or in any other way represents himself or herself:

(a) To be a professional surveyor; or

(b) As able to perform land surveying in this state;

(3) "Metadata" means a description of the content, ancestry and source, quantity, database schema, and accuracy of digital map data;

(4) "Professional surveyor" means a person who by reason of special knowledge of mathematics, surveying principles and methods, and legal requirements that are acquired by educational or practical experience is qualified to engage in the practice of land surveying and surveying measurement certification;

(5) "Responsible charge" means direct control of, supervision of, and legal responsibility for the surveying work performed; and

(6) "Surveying measurement certification" means providing the professional service of certification or sealing of maps, documents, digital files, or other data to verify that the maps, documents, digital files, or other data are authoritative professional determinations based on accepted methods and principles of surveying measurement or analysis representing or listing the following types of surveying measurements:

(A) The configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;

(B) The position or elevation of a survey boundary, control monument, or reference point; and

(C) The alignment or elevation of a fixed work embraced within the practice of professional engineering.

History. Acts 1967, No. 101, § 2; A.S.A. 1947, § 71-2302; Acts 2005, No. 1178, § 7; 2005, No. 1962, § 74; 2009, No. 444, § 5; 2011, No. 898, § 1.

Amendments. The 2011 amendment substituted "educational" for "education" in (4); and inserted (5) and redesignated the following subdivision accordingly.

17-48-104. Powers of the board.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may adopt and amend all bylaws and rules of procedure not inconsistent with the Arkansas Constitution and laws of this state or this chapter that may be reasonably necessary for the proper performance of its duties and the regulations of its proceedings, meetings, records, examinations, and the conduct thereof.

(b) The board may engage such technical advice and counsel as necessary to review applications, conduct interviews, prepare and give examinations, grade examinations, as required by this chapter, and to pay for such services.

(c)(1) In carrying into effect this chapter, the board, under the hand of its president and the seal of the board, may subpoena witnesses and compel their attendance and also may require the submission of books, papers, documents, or other pertinent data in any disciplinary matter or in any case in which a violation of this chapter is alleged.

(2) Upon failure or refusal to comply with any such order of the board or upon failure to honor its subpoena, as provided in this section, the board may apply to a court of any jurisdiction to enforce compliance with them.

(d)(1) In the name of the state, the board may apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce this chapter or to restrain any violation thereof.

(2) In such proceedings, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

(3) The members of the board shall not be personally liable under this procedure.

(e) The board may establish application fees, certificate fees, renewal fees, license reinstatement fees, examination fees, penalties for late renewals or cancellations, and any other fees it deems necessary within the guidelines of the State of Arkansas.

History. Acts 1967, No. 101, § 8; A.S.A. 1947, § 71-2307; Acts 2009, No. 444, § 6; 2013, No. 589, § 2.

Amendments. The 2013 amendment rewrote (e).

17-48-106. Failure to file boundary survey.**CASE NOTES****Revocation of License Proper.**

Arkansas Board of Registration for Professional Engineers and Land Surveyors' decision to revoke a surveyor's license was proper as substantial evidence supported findings of the surveyor's gross negligence under subsection (a) of this section and

that he violated the standards of conduct under § 17-48-205 in failing to perform work for a client. *Gilmore v. Ark. Bd. of Registration for Prof'l Eng'rs & Land Surveyors*, 2011 Ark. App. 139, 381 S.W.3d 860 (2011).

SUBCHAPTER 2 — REGISTRATION**SECTION.**

17-48-203. Qualifications — Certification.

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

17-48-205. Administrative violations and penalties.

SECTION.

17-48-206. Continuing education requirements.

17-48-208. Disciplinary action — Procedures.

17-48-203. Qualifications — Certification.

(a) A person who shows to the satisfaction of the State Board of Licensure for Professional Engineers and Professional Surveyors that he or she is a person of good character and reputation and over twenty-one (21) years of age shall be eligible for licensure as a professional surveyor if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure to engage in the practice of land surveying issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application that in the opinion of the board are equal to or higher than the requirements of this chapter may be licensed at the discretion of the board;

(2)(A) A graduate from an approved engineering curriculum with sufficient surveying courses or a surveying technology curriculum of two (2) years or more approved by the board, followed by at least two (2) years of land surveying that must be surveying experience of a character satisfactory to the board, who has passed a written examination designed to show that he or she is qualified to practice land surveying in this state, may be licensed if he or she is otherwise qualified.

(B) Each year of teaching land surveying in an approved engineering or surveying curriculum may be considered as equivalent to one (1) year of land surveying experience; or

(3)(A) An applicant who cannot qualify under subdivision (a)(2) of this section and who has six (6) years or more of active experience in

land surveying of a character satisfactory to the board and who has passed a written examination designed to show that he or she is qualified to practice land surveying may be granted a certificate of licensure to practice land surveying in this state if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(b) Effective January 1, 2017, an applicant for licensure as a professional surveyor shall qualify under one (1) of the following provisions:

(1)(A) A graduate holding a baccalaureate degree from a curriculum of four (4) years or more who has completed at least thirty (30) semester credit hours or the equivalent, as approved by the board, in courses involving land surveying, mapping, and real property, as approved by the board, followed by three (3) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination; or

(2)(A) A graduate holding an associate of science degree in surveying or an associate of applied science in surveying degree from a program approved by the board or its equivalent, as approved by the board, followed by six (6) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor, and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination.

(c) A person who shows to the satisfaction of the board that he or she is a person of good character shall be eligible for licensure as a surveyor intern if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure as a surveyor intern issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application, which requirements and qualifications, in the opinion of the board, are equal to or higher than the requirements of this chapter, may be licensed as a surveyor intern at the discretion of the board;

(2) A graduate from an approved engineering curriculum with sufficient surveying courses, or a surveying technology curriculum of two (2) years or more, approved by the board, who has passed a written

examination designed to show that he or she is proficient in surveying fundamentals, may be licensed if he or she is otherwise qualified; or

(3)(A) An applicant who cannot qualify under subdivision (c)(2) of this section and who has four (4) years or more of active experience in land surveying of a character satisfactory to the board and who has passed a written examination designed to show that he or she is proficient in surveying fundamentals may be licensed if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(d) Effective January 1, 2017, an applicant for licensure as a surveyor intern shall qualify under one (1) of the following:

(1)(A) A graduate holding or a student enrolled in the last year of a program leading to a baccalaureate degree from a curriculum of four (4) years or more who has finished at least thirty (30) semester credit hours, or the board-approved equivalent, in courses approved by the board involving land surveying, mapping, and real property shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is qualified shall be granted licensure as a surveyor intern on:

(i) Passing the written examination; and

(ii) Providing proof of graduation with a board-approved baccalaureate degree; or

(2)(A) A graduate holding or student enrolled in the last year of a program leading to an associate of science or an associate of applied science degree in surveying from a program approved by the board shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is qualified shall be granted licensure as a surveyor intern on:

(i) Passing the written examination; and

(ii) Providing proof of graduation with a board-approved associate of science or associate of applied science degree.

History. Acts 1967, No. 101, § 4; 1977, No. 807, § 2; A.S.A. 1947, § 71-2304; Acts 2005, No. 1178, § 12; 2009, No. 392, § 1; 2009, No. 444, § 7; 2011, No. 898, § 2.

inserted “or a student enrolled in the last year of a program leading to” in (d)(1)(A) and (d)(2)(A); and inserted (d)(1)(B)(i) and (d)(2)(B)(ii).

Amendments. The 2011 amendment

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

(a) All certificates shall be renewed annually or biennially at the discretion of the State Board of Licensure for Professional Engineers and Professional Surveyors.

(b) Certificates of licensure for professional surveyors and professional surveyor interns shall be renewed by the board to persons who are holders of certificates issued under this chapter who have furnished evidence satisfactory to the board of compliance with the requirements of § 17-48-206(a).

(c)(1)(A) Notwithstanding subsection (b) of this section, a professional surveyor or surveyor intern licensed under this chapter who is not engaged in the practice of land surveying may request in writing that the board place his or her name on the board's inactive roll, thereby granting him or her inactive status and protecting his or her right to obtain a certificate of licensure under subsection (b) of this section at such later time as he or she may wish to become engaged in the practice of land surveying.

(B) Inactive status shall continue as long as the licensee pays the annual fee under the board's rules.

(2) A professional surveyor whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of continuing professional competency.

(d) A professional surveyor or surveyor intern whose certificate of licensure is not renewed may have it reinstated by meeting the requirements of the board, depending on the time of nonrenewal under the rules of the board. The requirements the board may consider are:

(1) Payment of fees and penalties;

(2) Demonstration of continuing professional competency; and

(3) Reexamination.

History. Acts 1967, No. 101, § 7; 1977, No. 807, § 4; A.S.A. 1947, § 71-2306; Acts 1987, No. 1070, § 1; 1997, No. 1297, § 2; 2001, No. 591, § 4; 2005, No. 1178, § 13; 2009, No. 444, § 7; 2011, No. 898, § 3.

Amendments. The 2011 amendment

inserted "depending on the time of nonrenewal under the rules of the board" in the introductory language of (d); added "and penalties" in (d)(1); and deleted (d)(2) and redesignated the remaining subdivisions accordingly.

17-48-205. Administrative violations and penalties.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend, revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, fine, or reprimand a professional surveyor who is:

(1) Found guilty of:

(A) Fraud or deceit in obtaining, attempting to obtain, or renewing a certificate of licensure or certificate of authorization;

(B) Negligence, incompetency, or misconduct in the practice of surveying;

(C) Failure to comply with this chapter, the rules of the board, or an order of the board;

- (D) Discipline by another state, territory, the District of Columbia, a foreign, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section;
- (E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter;
- (F) Knowingly making false statements or signing false statements, certificates, or affidavits to induce payment;
- (G) Aiding or assisting another person in violating this chapter or the rules of the board;
- (H) Violating a term of probation imposed by the board;
- (I) Using a seal or practicing surveying while the professional surveyor's license is suspended, revoked, nonrenewed, or inactive;
- (J) Signing, affixing the professional surveyor's seal, or permitting the professional surveyor's seal or signature to be affixed to an instrument of practice that has not been prepared or completely checked by the professional surveyor or under the professional surveyor's direct supervision or control;
- (K) Engaging in dishonorable, unethical, or unprofessional conduct of character likely to deceive, defraud, or harm the public;
- (L) Providing false testimony or information to the board; or
- (M) Habitual intoxication or addiction to the use of drugs or alcohol;

(2) Found guilty of or enters a plea of guilty or nolo contendere to:

- (A) A felony;
- (B) A crime of which an essential element is dishonesty; or
- (C) A crime that is directly related to the practice of surveying; or

(3) Subject to disciplinary action by another state, territory, the District of Columbia, a foreign country, the United States Government, or other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section.

(b) The board may take the following action against a professional surveyor:

- (1) Suspend or revoke a certificate of licensure;
- (2) Refuse to issue, restore, or renew a certificate of licensure;
- (3) Place on probation, impose a fine, or reprimand; or
- (4) A combination of the above.

(c) A person that violates this chapter or a rule of the board shall pay a civil penalty to the board of not more than five thousand dollars (\$5,000) for each offense.

(d)(1) The board shall adopt rules of professional conduct under § 17-48-104 that are to be provided to an applicant for licensure.

(2) The board may amend these rules of professional conduct from time to time and shall notify each licensee in writing of the amendments.

(e) The board may:

- (1) Revoke a certificate of authorization;
- (2) Suspend a certificate of authorization for a time not exceeding two (2) years of a firm when one (1) or more of its officers or directors have been found guilty of conduct that would authorize a revocation or suspension of their certificates of licensure under this section;
- (3) Place a firm on probation for a period and subject to the conditions as the board may specify; or
- (4) Levy a fine in an amount not more than five thousand dollars (\$5,000) for each offense.
- (f) The board may levy a fine in an amount not more than five thousand dollars (\$5,000) for each offense against nonlicensees that violate this chapter.

History. Acts 1967, No. 101, § 9; 1977, No. 807, § 5; A.S.A. 1947, § 71-2308; Acts 2005, No. 1178, § 14; 2009, No. 444, § 7; 2011, No. 898, § 4.

Amendments. The 2011 amendment rewrote the section and section heading.

CASE NOTES

Revocation of License Proper.

Arkansas Board of Registration for Professional Engineers and Land Surveyors' decision to revoke a surveyor's license was proper as substantial evidence supported findings of the surveyor's gross negligence

under § 17-48-106(a) and that he violated the standards of conduct under this section in failing to perform work for a client. *Gilmore v. Ark. Bd. of Registration for Prof'l Eng'r's & Land Surveyors*, 2011 Ark. App. 139, 381 S.W.3d 860 (2011).

17-48-206. Continuing education requirements.

(a)(1) The State Board of Licensure for Professional Engineers and Professional Surveyors shall issue rules establishing the continuing education requirements for professional surveyors and surveyor interns.

(2) The rules shall take into account the accessibility to applicants of the board's continuing education requirements.

(3) The rules may:

(A) Rely upon guidelines and pronouncements of recognized educational and professional associations;

(B) Prescribe the content, duration, and organization of courses;

(C) Provide for the relaxation or suspension of requirements for:

(i) Applicants who certify that they do not intend to engage in the practice of surveying; and

(ii) Instances of individual hardship;

(D) Exempt from licensed continuing education requirements a professional surveyor sixty (60) years of age or older with twenty (20) or more years of experience as a practicing professional surveyor; and

(E)(i) Prescribe the manner and condition under which credit shall be given for participation in a program of continuing education that the board considers necessary and appropriate to maintain competency in the practice of surveying.

(ii) Examples of programs of continuing education that are acceptable include without limitation programs or seminars sponsored by higher educational institutions, government agencies, and professional surveying organizations and related professions.

(b)(1) An application for renewal of a certificate of licensure shall be accompanied by evidence documenting the completion of acceptable continuing education credit during the previous renewal period.

(2) Failure by an applicant to provide this evidence upon request by the board is grounds for disciplinary action unless the board determines the failure is due to a reasonable cause or the applicant was not engaged in the practice of surveying during the previous renewal period.

(3) The board may renew a certificate of licensure despite an applicant's failure to furnish satisfactory evidence of meeting continuing education requirements and may issue a certificate of licensure to an applicant who has previously maintained inactive status under § 17-48-204(c) if the applicant follows a particular program or schedule of continuing education prescribed by the board.

History. Acts 1987, No. 1070, § 1; **Amendments.** The 2011 amendment 2005, No. 1178, § 15; 2009, No. 444, § 7; rewrote the section. 2011, No. 898, § 5.

17-48-208. Disciplinary action — Procedures.

(a) The rules promulgated by the State Board of Licensure for Professional Engineers and Professional Surveyors for disciplinary procedures shall be based on and consistent with the model rules of procedure of the Attorney General.

(b) A charge, unless dismissed or settled informally, is to be heard by the board within twelve (12) months after the date on which the charge was submitted.

(c)(1) A fine or civil penalty not paid within fifty (50) days after the order becomes final is a judgment.

(2) The order is to be filed as a judgment and executed in the same manner as other judgments.

(d) The board, on petition of an individual licensee or firm holding a certificate of authorization, may reissue a certificate of licensure or authorization if a majority of the members of the board vote for the issuance.

History. Acts 2011, No. 898, § 6.

CHAPTER 50

WATER WELL CONSTRUCTORS

SUBCHAPTER.

3. CERTIFICATES, LICENSES, AND PERMITS.

SUBCHAPTER 3 — CERTIFICATES, LICENSES, AND PERMITS

SECTION.

17-50-301. Certificate — Applicant qualifications.

17-50-301. Certificate — Applicant qualifications.

(a) Upon proper application to the Commission on Water Well Construction, a person is entitled to be registered and to be issued a certificate of registration as a certified water well driller or certified pump installer who shall furnish to the commission proof that he or she:

- (1) Is at least eighteen (18) years of age;
- (2) Is of good moral character;
- (3) Has knowledge of the rules adopted under this chapter; and
- (4)(A) Has experience as defined by the commission's rules in the work for which he or she is applying for a certificate of registration.

(B) An applicant may satisfy the requirement under subdivision (a)(4)(A) of this section by:

- (i) Completing the commission's apprenticeship program;
- (ii) Holding a valid certificate of registration from the commission, within the past ten (10) years, of the type and class for which the applicant is applying; or
- (iii) Providing a valid certificate from another state of a type and class substantially similar to the type and class for which the applicant is applying for the period of time equal to the requirement for the apprenticeship program.

(b) The commission shall provide examinations and a course of instruction, when required, that each applicant must pass in order to qualify for the certificate of registration.

History. Acts 1969, No. 641, § 10; 1981, No. 521, § 1; A.S.A. 1947, § 21-2010; Acts 1987, No. 693, § 4; 1993, No. 328, § 1; 1993, No. 348, § 1; 1993, No. 1219, § 13; 2001, No. 1184, § 3; 2003, No. 297, § 6; 2013, No. 324, § 1.

Amendments. The 2013 amendment deleted "and regulations" following "rules" in (a)(3); redesignated former (a)(4) as (a)(4)(A); deleted "had no less than two (2) years of" following "Has" in (a)(4)(A); added (a)(4)(B); and deleted (c).

CHAPTER 53
HEALTH EDUCATORS

SUBCHAPTER.

2. ARKANSAS BOARD OF HEALTH EDUCATION.

SUBCHAPTER 2 — ARKANSAS BOARD OF HEALTH EDUCATION

SECTION.

17-53-210. Transfer of the Arkansas

Board of Health Education.

Effective Dates. Acts 2013, No. 480, § 3: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act transfers the Arkansas Board of Health Education to the Arkansas Department of Health; that to effectively administer this act the transition

should occur at the beginning of the next fiscal year; and that the effectiveness of this act on July 1, 2013, is essential to the operation of the agencies. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2013."

17-53-201. Creation — Members — Terms — Removal.

A.C.R.C. Notes. Acts 2013, No. 480, § 1, provided: "Effective July 1, 2013, the Arkansas Board of Health Education established by Arkansas Code § 17-53-201

is transferred as a Type 1 transfer under Arkansas Code § 25-2-104 to the Arkansas Department of Health."

17-53-210. Transfer of the Arkansas Board of Health Education.

(a)(1) Effective July 1, 2013, the Arkansas Board of Health Education is transferred to the Department of Health and shall be administered by the Director of the Department of Health.

(2) All authority, powers, duties, functions, records, authorized positions, property, unexpended balances of appropriations, allocations, or other funds of the board are transferred to the department.

(b) In order to protect the board, to allow for continuation of necessary procedures, and to provide for a smooth transition to the department, the director may not realign the functions and records of the board before July 1, 2014.

History. Acts 2013, No. 480, § 2.

A.C.R.C. Notes. Acts 2013, No. 480, § 1, provided: "Effective July 1, 2013, the Arkansas Board of Health Education es-

tablished by Arkansas Code § 17-53-201 is transferred as a Type 1 transfer under Arkansas Code § 25-2-104 to the Arkansas Department of Health."

CHAPTER 54

ARKANSAS MOLD INVESTIGATOR LICENSING ACT

SECTION.

17-54-101 — 17-54-104. [Repealed.]

17-54-101 — 17-54-104. [Repealed.]

A.C.R.C. Notes. Acts 2011, No. 341, § 1, provided: "Mold Investigation Advisory Board — Creation — Duties.

"(a) The Mold Investigation Advisory Board is created.

"(b) The board shall consist of nine (9) members as follows:

"(1) One (1) member of the Senate appointed by the President Pro Tempore of the Senate;

“(2) One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives;

“(3) Seven (7) members appointed by the Governor as follows:

“(A) One (1) member to represent the State Plant Board;

“(B) One (1) member to represent the Department of Health;

“(C) One (1) member to represent the Department of Labor;

“(D) One (1) member to represent the Arkansas Realtors Association;

“(E) One (1) member to represent the Arkansas Association of Real Estate Inspectors;

“(F) One (1) member to represent the Arkansas Pest Management Association; and

“(G) One (1) member who is a licensed mold inspector.

“(c) The members of the Mold Investigation Advisory Board shall serve until December 31, 2012.

“(d) The Mold Investigation Advisory Board shall select from its membership a chair and a vice-chair.

“(e)(1) The members of the Mold Investigation Advisory Board shall hold the first meeting in offices made available by the State Plant Board within thirty (30) days of the appointment of the members of the Mold Investigation Advisory Board.

“(2) The Mold Investigation Advisory Board shall meet quarterly or more often at the call of the chair or vice-chair.

“(f)(1) A majority of the membership of the Mold Investigation Advisory Board shall constitute a quorum.

“(2) A majority vote of the members present is required for any action of the Mold Investigation Advisory Board.

“(g) A vacancy on the Mold Investigation Advisory Board due to death, resignation, removal, or other causes shall be filled in the same manner as for the initial appointment.

“(h) The members of the Mold Investigation Advisory Board may be removed for cause by the appointing official.

“(i)(1) The Mold Investigation Advisory Board shall study:

“(A) The effects on the public health and safety of existing statutes and rules regarding mold investigations and remediation; and

“(B) Approaches to changing existing statutes to better meet the needs of Arkansas citizens.

“(2) By December 31, 2012, the Mold Investigation Advisory Board shall report its findings and proposals for new legislation to:

“(A) The State Plant Board;

“(B) The chair of the House Committee on Public Health, Welfare, and Labor and the chair of the Senate Committee on Public Health, Welfare, and Labor; and

“(C) The Governor.

“(j) The Mold Investigation Advisory Board shall be abolished on December 31, 2012.”

Publisher's Notes. This chapter was repealed by Acts 2011, No. 518, § 1. The chapter was derived from the following sources:

17-54-101. Acts 2009, No. 1467, § 1.

17-54-102. Acts 2009, No. 1467, § 1.

17-54-103. Acts 2009, No. 1467, § 1; 2011, No. 859, § 9.

17-54-104. Acts 2009, No. 1467, § 1.

CHAPTER 55

ELECTRICAL INSPECTORS

SECTION.

17-55-101. Licensure of electrical inspectors.

17-55-102. Provisions applicable to electrical inspectors.

17-55-103. Persons employed as electrical inspectors as of the effective date of this act.

SECTION.

17-55-104. Disposition of funds.

17-55-105. Authority to charge fees for continuing education.

17-55-106. Rules.

17-55-101. Licensure of electrical inspectors.

(a) A person employed as an electrical inspector in the State of Arkansas shall hold an electrical inspector license issued by the Board of Electrical Examiners of the State of Arkansas.

(b)(1) A person shall apply for licensure as an electrical inspector on a form approved by the board within thirty (30) days of employment as an electrical inspector.

(2) Applications shall be made to the board and shall contain:

(A) Proof of employment with the state or a political subdivision of the state as an electrical inspector in the State of Arkansas;

(B)(i) Verification of work experience as required by rule of the board.

(ii) Work experience shall include without limitation demonstrated knowledge of:

(a) The standard materials and methods used in the installation of electric equipment;

(b) Approved methods of construction to ensure the safety of persons and property; and

(c) The requirements of the statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work under § 20-31-104; and

(C) Payment of a license fee as established by rule of the board that shall not exceed fifty dollars (\$50.00).

(c) An electrical inspector license:

(1) Shall expire on January 1 of each year; and

(2) May be renewed upon application to the board and submission of the following information:

(A) Proof of continued employment as an electrical inspector in the State of Arkansas;

(B) Payment of a renewal fee as established by rule of the board that shall not exceed fifty dollars (\$50.00); and

(C)(i) Proof of completion of at least sixteen (16) hours of continuing education.

(ii) The board shall promulgate rules to set standards for continuing education for licensees under subdivision (c)(2)(C)(i) of this section. The rules shall include without limitation continuing education on the statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work under § 20-31-104.

(iii) The Department of Labor may conduct or sponsor continuing education classes for electrical inspectors.

(d)(1) The board may revoke or suspend an electrical inspector's license for just cause subject to appeal and hearing before the board according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) A civil penalty may be assessed against an electrical inspector by the Department of Labor and subject to appeal and hearing before

the board according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if it is determined that the electrical inspector has violated a:

- (i) Provision of this chapter;
- (ii) Rule, regulation, or order issued or promulgated by the board; or

- (iii) Condition of a license issued by the board.

(B) For each violation, the civil penalty shall not exceed the following:

- (i) Two hundred fifty dollars (\$250) for a first offense;
- (ii) Seven hundred fifty dollars (\$750) for a second offense; or
- (iii) One thousand dollars (\$1000) for a third offense.

(C) Each day of a continuing violation is a separate violation for purposes of penalty assessment.

(D) Assessment of a civil penalty by the board shall be made no later than two (2) years after the date of the occurrence of the violation.

(E) If an electrical inspector against whom a civil penalty has been imposed fails to pay the penalty within sixty (60) days of the board's decision, the Director of the Department of Labor may file an action in a court of competent jurisdiction to collect the civil penalty without paying costs or giving bond for costs.

(F) Any penalties collected under this section shall be deposited as special revenues into the State Treasury to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties of this chapter.

(e) If a person simultaneously holds an electrical inspector license and a license as a master electrician or a journeyman electrician, the person, when renewing his or her master electrician or journeyman electrician license, shall be exempt from the:

- (1) Renewal fee under § 17-28-301; and
- (2) Continuing education requirements for master electricians and journeyman electricians under § 17-28-311.

History. Acts 2013, No. 756, § 4.

17-55-102. Provisions applicable to electrical inspectors.

(a)(1) Licensure as an electrical inspector does not qualify a person to act as an electrician under § 17-28-101 et seq.

(2)(A) This chapter shall not require an individual to hold a license before doing electrical work on his or her primary residence except as otherwise required by state law, rules, regulations, or local ordinances.

(B) The exemption from compliance with the licensing standards shall not be referred to in any way and shall not be evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

(b) A person licensed as an electrical inspector under this chapter shall not inspect electrical work that he or she:

- (1) Installed; or
- (2) Supervised.

(c)(1) Except as provided in subdivisions (c)(2) and (c)(3) of this section, a person licensed as an electrical inspector shall conduct inspections only within the political subdivision employing the inspector.

(2) If a person licensed as an electrical inspector is employed by more than one (1) political subdivision, he or she may conduct inspections within any of the political subdivisions employing the person as an electrical inspector.

(3) A person employed by the state as an electrical inspector may conduct inspections anywhere within the State of Arkansas.

(d) This act shall not prohibit a person licensed as an electrical inspector or an electrician from performing work free of charge on his or her own properties, properties of family members, or for a non-profit charity if the person holds the requisite license for the work performed free of charge.

History. Acts 2013, No. 756, § 4.

17-55-103. Persons employed as electrical inspectors as of the effective date of this act.

(a) A person employed as an electrical inspector as of the effective date of this act shall be issued a temporary electrical inspector license upon submission of the following information to the Board of Electrical Examiners of the State of Arkansas:

(1) Proof of employment with the state or a political subdivision of the state as an electrical inspector in the State of Arkansas;

(2) Verification of work experience as required by rule of the board; and

(3) Payment of a license fee as required by rule of the board.

(b)(1) A temporary license issued under this section shall expire on January 1, 2014.

(2) A recipient of a temporary license shall be eligible to apply for an electrical inspector license under this chapter.

History. Acts 2013, No. 756, § 4.

17-55-104. Disposition of funds.

All funds received by the Board of Electrical Examiners of the State of Arkansas under this chapter shall be deposited as special revenues into the State Treasury to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties as set out in this chapter, § 17-28-101 et seq., and the Arkansas Electrical Code Authority Act, § 20-31-101 et seq., and to defray the costs of the maintenance, operation, and

improvements required by the department in carrying out the functions, powers, and duties otherwise imposed by law on the Director of the Department of Labor.

History. Acts 2013, No. 756, § 4.

17-55-105. Authority to charge fees for continuing education.

- (a) The Department of Labor may charge fees for continuing education classes that it conducts or sponsors for electrical inspectors.
- (b) Fees under subsection (a) of this section shall be established by rule of the Board of Electrical Examiners of the State of Arkansas.

History. Acts 2013, No. 756, § 4.

17-55-106. Rules.

The Board of Electrical Examiners of the State of Arkansas may promulgate rules necessary to implement this chapter.

History. Acts 2013, No. 756, § 4.

